

UNITED STATES OF AMERICA,)	
)	
vs.)	CASE NO. 1:22-CR-72-MR-WCM-1
)	
TIMOTHY MICHAEL DEVER,)	
)	
Defendant.)	
_____)	
)	
UNITED STATES OF AMERICA,)	
)	
vs.)	CASE NO. 1:22-CR-72-MR-WCM-2
)	
DARRIS GIBSON MOODY,)	
)	
Defendant.)	
)	

MICHELLE A. McGIRR, RMR, CRR, CRC
Official Court Reporter
United States District Court
Asheville, North Carolina

APPEARANCES:**On Behalf of the Government:**

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On Behalf of the Defendants:

(Timothy Michael Dever)

**HOWARD W. ANDERSON, III, Esquire
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(Darris Gibson Moody)

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USPO:

JENNIFER CALL

1 (Thursday, August 24, 2023)

2 **P R O C E E D I N G S**

3
4 (The defendant, Darris Gibson Moody, escorted into the courtroom
5 at 1:53 p.m.)

6 (The defendant, Timothy Michael Dever, escorted into the courtroom
7 at 1:53 p.m.)

8 (Open Court at 2:00 p.m.)

9 THE COURT: Good afternoon, everyone.

10 (All say good afternoon)

11 THE COURT: This afternoon we have two matters on the
12 docket both for sentencing. One is United States v. Darris Gibson
13 Moody, which is before the Court for the sentencing of the defendant
14 pursuant to a plea of guilty on the charge of interstate threatening
15 communication in violation of 18 U.S.C., Section 872(c).

16 The other one is United States v. Timothy Michael Dever,
17 which is before the Court for the sentencing of the defendant on the
18 charge of aiding and abetting interstate threatening communications,
19 five counts, in violation of 18 U.S.C., Section 875(c) and Section
20 2.

21 Ms. Jones, good afternoon.

22 MS. JONES: Good afternoon, your Honor.

23 THE COURT: Is defendant Moody prepared to proceed this
24 afternoon?

25 MS. JONES: Yes, your Honor. Mrs. Moody is prepared to

1 proceed.

2 THE COURT: Mr. Anderson, good afternoon to you.

3 MR. ANDERSON: Good afternoon, your Honor.

4 THE COURT: Is Mr. Dever prepared to proceed this
5 afternoon?

6 MR. ANDERSON: We are, your Honor. Thank you.

7 THE COURT: Am I pronouncing it correctly? Is it DE-VER
8 rather than DEV-ER?

9 MR. ANDERSON: I think it's Dever like never, Judge.

10 THE COURT: Dever, okay. Pardon me for mispronouncing
11 it.

12 Mr. Gast, good afternoon to you.

13 MR. GAST: Good afternoon, your Honor.

14 THE COURT: Is the Government prepared to proceed?

15 MR. GAST: We are, your Honor.

16 THE COURT: Obviously having a joint sentencing hearing
17 is far out of the ordinary for all of us, but it was presented to
18 the Court that there were victims that are victims with regard to
19 both of these cases who apparently wanted to be here and also
20 present victim impact statements.

21 Therefore, what I would propose, in terms of the process
22 for going forward this afternoon would be to start first with Ms.
23 Moody's hearing, going through the completion of the Rule 11 and
24 then disposing of the issues regarding the pre-sentence report.

25 Then switching over to Mr. Dever to do those two steps

1 with regard to his hearing and then turning to any victim impact
2 statements.

3 Then picking up with arguments for the appropriate
4 sentence and allocution for Ms. Moody, then moving on to those same
5 two steps for Mr. Dever.

6 Mr. Gast, let me start with you. Is there any objection
7 to proceeding in that manner or do you feel that there may be a
8 better way to go about this?

9 MR. GAST: No, your Honor. There are no objections. The
10 clerk's office has been very good about telling us -- forecasting
11 for us what the Court had in mind and we think that's a good plan.

12 THE COURT: Okay. Ms. Jones, do you have anything you
13 wanted to offer with regard to that manner of proceeding?

14 MS. JONES: No, your Honor. No objection for Mrs. Moody.

15 THE COURT: Mr. Anderson?

16 MR. ANDERSON: No objection, your Honor. My only request
17 would be after we finish with Ms. Moody, if I could have a few
18 minutes to talk to my client before we begin our portion. I don't
19 know how long it's going to take, but I think that would be helpful
20 to have one or two minutes with him after we're done with the first
21 sentencing.

22 THE COURT: Well, and at what stage are you talking
23 about? Are you saying after we complete the issue regarding the PSR
24 for Ms. Moody when we move to your part, just on what I'm referring
25 to as phase I, phase II, you're wanting some sort of recess at that

1 point to talk to your client?

2 MR. ANDERSON: After you finish phase II with Ms. Moody
3 and so we've completed sort of the pronouncement of judgment and
4 then it's going to be our turn to sort of start our presentation, if
5 I could have a few minutes. I don't know if he's going to be out
6 here during all of this or if I could just talk to him in the back,
7 but before I guess -- before we begin our allocution, et cetera,
8 just to have a few minutes with him.

9 THE COURT: Okay. So after phase I, phase II for both
10 defendants, victim impact statements, then phase III and IV for Ms.
11 Moody, you want at least a brief recess at that point?

12 MR. ANDERSON: Yes, Judge.

13 THE COURT: Okay. Now, you talked about after
14 pronouncement of sentence. My intent would be to wait until we
15 finished all of that and then pronounce one sentence and then the
16 other sentence so...

17 MR. ANDERSON: Then I may have misunderstood, your Honor.
18 But, again, before we get to his part to -- of allocution, I would
19 like to have a moment to discuss with him his allocution.

20 THE COURT: Okay. Well, depending on how long things
21 take, you may get an additional opportunity before then.

22 MR. ANDERSON: Thank you, your Honor.

23 THE COURT: Okay. Turning first to Ms. Moody.

24 With regard to that matter, I have noted that there were
25 some objections to the pre-sentence report, one of which I think we

1 probably will need to take up.

2 I have reviewed the -- a sentencing memorandum submitted
3 on behalf of the defendant along with a number of attachments.
4 There's a sentencing memorandum that has been submitted by the
5 Government along with a number of attachments; and then there was a
6 subsequent additional victim impact statement; and then there is a
7 motion for departure that has been filed by the Government.

8 Are there any other items that have been submitted in
9 anticipation of this hearing with regard to Ms. Moody?

10 MS. JONES: There is nothing else to consider, your
11 Honor.

12 And at the appropriate time, I can clarify the status of
13 our objections, but I think we'll be withdrawing our outstanding
14 objection. And I apologize if that wasn't clear in the sentencing
15 memo when I -- I think I said we're satisfied with the resolution.
16 I meant to say that we're withdrawing that remaining objection
17 regarding obstruction of justice.

18 THE COURT: Okay.

19 Mr. Gast, anything further that has been submitted by the
20 Government in preparation for the hearing for Ms. Moody?

21 MR. GAST: I don't think so. There's one outstanding
22 motion to seal the Government made that I don't think has been ruled
23 upon, but that doesn't have a bearing on sentence but just wanted to
24 bring that up as a housekeeping matter.

25 THE COURT: There were a couple of motions to seal

1 regarding both of these and written orders will be entered on those,
2 but offhand I don't think there's any problem with any of those.

3 Ms. Moody, I need for you to stand, please.

4 Do you recall appearing before the Magistrate Judge on or
5 about the 6th of January of this year for the purpose of entering a
6 plea of guilty in this case?

7 DEFENDANT MOODY: Yes, your Honor.

8 THE COURT: Do you remember being sworn in or placed
9 under oath at that time?

10 DEFENDANT MODDY: Yes, your Honor.

11 THE COURT: Do you remember answering the questions of
12 the Magistrate Judge?

13 DEFENDANT MOODY: Yes, your Honor.

14 THE COURT: Is it correct that at that time you signed a
15 plea inquiry form indicating that your answers were true and correct
16 at the time they were given?

17 DEFENDANT MOODY: Yes, Your Honor.

18 THE COURT: Were your answers, in fact, true and correct
19 when you answered the questions of the Magistrate Judge?

20 DEFENDANT MOODY: Yes, your Honor.

21 THE COURT: If I asked you all the same questions here
22 today, would your answers be the same?

23 DEFENDANT MOODY: Yes, your Honor.

24 THE COURT: Ms. Jones, were you in attendance at the Rule
25 11 hearing for your client?

1 MS. JONES: I was, your Honor.

2 THE COURT: Are you satisfied that she fully understood
3 the questions that were asked of her by the Magistrate Judge at that
4 hearing?

5 MS. JONES: Yes, your Honor.

6 THE COURT: Are you satisfied that she has fully
7 understood the questions that I've asked her here today?

8 MS. JONES: Yes, your Honor.

9 THE COURT: Ms. Moody, did you answer those questions the
10 way that you did and are you pleading guilty because you did, in
11 fact, commit the crime with which you are charged?

12 DEFENDANT MOODY: Yes, your Honor.

13 THE COURT: Is your plea of guilty the result of any
14 threat or force or promise, aside from the promises that are in your
15 plea agreement?

16 (The defendant, Darris Gibson Moody, conferring with Attorney Jones
17 at counsel table briefly off the record)

18 DEFENDANT MOODY: No, your Honor.

19 THE COURT: Are you pleading guilty voluntarily?

20 DEFENDANT MOODY: Yes, your Honor.

21 THE COURT: In this case you've pleaded guilty pursuant
22 to a plea agreement. In that plea agreement you have agreed and the
23 Government has agreed to certain facts and certain factors for
24 sentencing. But under the law, I'm not required to accept those
25 facts or those factors just because both sides have agreed. And if

1 I decline to accept any of those facts or factors in my sentencing
2 decision, that will not give you the right to withdraw your plea.
3 Do you understand that?

4 DEFENDANT MOODY: Yes, your Honor.

5 THE COURT: And is it still your plea to plead guilty in
6 this matter?

7 DEFENDANT MOODY: Yes, your Honor.

8 THE COURT: Based upon the representations made to the
9 Court and the answers given by the defendant at the Rule 11 hearing
10 before the Magistrate Judge, the Court finds, concludes and confirms
11 that the defendant's plea is knowingly and voluntarily made and that
12 the defendant understands the charges, potential penalties and
13 consequences of her plea.

14 Ms. Jones, does the defendant stipulate that there is a
15 factual basis to support her plea of guilty entered in this case;
16 and further, that the Court may accept the evidence as set forth in
17 the pre-sentence report, which includes the factual basis document
18 that was adopted at the Rule 11 hearing, as well as the Statement of
19 Relevant Conduct that has been submitted by the Government
20 thereafter, all as establishing such factual basis?

21 MS. JONES: Yes, your Honor.

22 THE COURT: Mr. Gast, does the Government so stipulate?

23 MR. GAST: We do, your Honor.

24 THE COURT: Based on the stipulation of the parties and
25 the evidence as set forth in the pre-sentence report, the factual

1 basis document and the Statement of Relevant Conduct, all of which
2 have been previously reviewed by the Court; and based upon the
3 defendant's admission of guilt, the Court finds, concludes and
4 confirms that there is a factual basis for the defendant's plea.

5 Accordingly, the Court confirms the Magistrate Judge's
6 acceptance of the defendant's guilty plea and this Court has
7 accepted and does accept the defendant's plea of guilty, finds the
8 defendant is guilty and enters thereon a verdict and judgment of
9 guilty.

10 Ms. Moody, there is a document that has been prepared by
11 the probation officer. The document that I'm talking about, on its
12 front page on the upper left-hand side, has a caption that reads,
13 United States of America vs. Darris Gibson Moody. Then on the upper
14 right-hand side of the page has a title that reads, pre-sentence
15 investigation report.

16 I see that your attorney is showing you a copy of that
17 document there at your table. Have you seen this document prior to
18 today?

19 DEFENDANT MOODY: Yes, your Honor.

20 THE COURT: Have you had an opportunity to review it with
21 your attorney?

22 DEFENDANT MOODY: Yes, your Honor.

23 THE COURT: Do you understand the contents of that
24 document?

25 DEFENDANT MOODY: Yes, your Honor.

1 THE COURT: Ms. Jones, have you had an adequate
2 opportunity to review the pre-sentence report with Ms. Moody?

3 MS. JONES: I have, your Honor.

4 THE COURT: Are you satisfied that she understands the
5 contents of the pre-sentence report?

6 MS. JONES: I am satisfied, your Honor.

7 THE COURT: Okay. Thank you.

8 Ms. Moody, you may take your seat.

9 Regarding the pre-sentence report, as I mentioned
10 earlier, there were some objections to the pre-sentence report that
11 were filed. The one that I thought might still be for argument
12 pertained to one particular enhancement but, Ms. Jones, I understand
13 that that is being withdrawn.

14 Are there any other issues regarding the pre-sentence
15 report that we need to take up?

16 MS. JONES: No, sir, your Honor.

17 THE COURT: Any for the Government?

18 MR. GAST: No, your Honor.

19 THE COURT: Okay. With that, the Court will accept the
20 pre-sentence report as written and based thereon, the Court will
21 find that the total offense level that applies in this case is level
22 19 and the Criminal History Category is category I.

23 That total offense level and Criminal History Category,
24 the Court will conclude, yield a Guideline range that calls for a
25 term of imprisonment between 30 and 37 months.

1 Ms. Jones, did I calculate that correctly?

2 MS. JONES: Yes, sir, your Honor.

3 THE COURT: Do you agree, Mr. Gast?

4 MR. GAST: Yes, your Honor.

5 THE COURT: The next thing I want to take up is the
6 Government's motion for a departure.

7 Mr. Gast, I have reviewed what you have submitted in
8 writing -- actually, I believe Mr. Thorneloe submitted it in writing
9 -- but do you want to supplement that here in court or are you
10 standing on your filing?

11 MR. GAST: We're happy to stand on the filing and happy
12 to answer any questions the Court might have.

13 THE COURT: Well, the Court has reviewed the Government's
14 motion for a downward departure and the Court will find in accord
15 with what has been submitted by the Government regarding this motion
16 and based thereon, the Court will find that the defendant has
17 provided substantial assistance in the investigation and prosecution
18 of others and that the nature and extent of such assistance warrants
19 a downward departure the equivalent of two levels.

20 Therefore, the Court will sentence in this matter with
21 reference to an offense level 17 rather than an offense level of 19,
22 which was based on the factors that are set forth in the
23 pre-sentence report and, therefore, will sentence with reference to
24 a sentencing range calling for a term of imprisonment between 24 and
25 30 months.

1 Ms. Jones, did I correctly calculate the effect of a
2 two-level downward departure?

3 MS. JONES: Yes, sir, your Honor.

4 THE COURT: Is there anything else that we need to
5 address with regard to Ms. Moody's matter regarding either the
6 pre-sentence report, Guideline range, before we move on to Mr. Dever
7 for this portion?

8 Anything else for the defendant?

9 MS. JONES: No, sir, your Honor.

10 THE COURT: Anything else for the Government?

11 MR. GAST: No, your Honor.

12 THE COURT: Okay.

13 Now, with regard to Mr. Dever, in preparation for this
14 hearing today, I have reviewed objections to the pre-sentence
15 report. And there are objections that have been filed on behalf of
16 the defendant. There was an objection filed by the Government.

17 I have reviewed sentencing memoranda. One filed on
18 behalf of the defendant that includes letters of support and a
19 report, and a sentencing memorandum that has been submitted by the
20 Government, including various attachments and documents, but then
21 also, thereafter, providing an additional victim impact statement.

22 And then there was also an additional filing having to do
23 with the identification of the victims by name and title that was
24 filed under seal.

25 Are there any other items, other than the motions to

1 seal, that have been submitted in anticipation of this hearing?

2 Anything for the defendant?

3 MR. ANDERSON: No, your Honor.

4 THE COURT: Anything for the Government?

5 MR. GAST: No, your Honor.

6 THE COURT: Mr. Dever, I need for to you stand, please.

7 Do you recall appearing before the Magistrate Judge on or
8 about the 24th of March of this year for the purpose of entering a
9 plea of guilty in this case?

10 DEFENDANT DEVER: Yes, your Honor.

11 THE COURT: Do you remember being sworn in or placed
12 under oath at that time?

13 DEFENDANT DEVER: Yes, your Honor.

14 THE COURT: Do you remember answering the questions of
15 the Magistrate Judge?

16 DEFENDANT DEVER: Yes, your Honor.

17 THE COURT: Is it correct that at that time you signed a
18 plea inquiry form indicating that your answers were true and correct
19 at the time they were given?

20 DEFENDANT DEVER: Yes, your Honor.

21 THE COURT: Were your answers, in fact, true and correct
22 when you answered the questions of the Magistrate Judge?

23 DEFENDANT DEVER: Yes, your Honor.

24 THE COURT: If I asked you all the same questions here
25 today, would your answers be the same?

1 DEFENDANT DEVER: Yes, your Honor.

2 THE COURT: Mr. Anderson, were you in attendance at the
3 Rule 11 hearing for your client?

4 MR. ANDERSON: I was, your Honor.

5 THE COURT: Are you satisfied that he fully understood
6 the questions that were asked of him by the Magistrate Judge at that
7 hearing?

8 MR. ANDERSON: I am, Judge.

9 THE COURT: Are you satisfied that he has fully
10 understood the questions that I've asked him here today?

11 MR. ANDERSON: I am, your Honor.

12 THE COURT: Mr. Dever, did you answer those questions the
13 way that you did and are you pleading guilty because you did, in
14 fact, commit the crime with which you are charged?

15 DEFENDANT DEVER: Yes, your Honor.

16 THE COURT: Is your plea of guilty the result of any
17 threat or force or promise, aside from the promises in your plea
18 agreement?

19 DEFENDANT DEVER: No, your Honor.

20 THE COURT: Are you pleading guilty voluntarily?

21 DEFENDANT DEVER: Yes, your Honor.

22 THE COURT: In this case you've pleaded guilty pursuant
23 to a plea agreement. And in that plea agreement you have agreed,
24 and the Government has agreed, to certain facts and certain factors
25 for sentencing. But under the law I'm not required to accept those

1 facts or those factors just because both sides have agreed.

2 If I decline to accept any of those facts or factors in
3 my sentencing decision, that will not give you the right to withdraw
4 your plea. Do you understand that?

5 DEFENDANT DEVER: Yes, your Honor.

6 THE COURT: Is it still your plea to plead guilty in this
7 matter?

8 DEFENDANT DEVER: Yes, your Honor.

9 THE COURT: Based upon the representations made to the
10 Court and the answers given by the defendant at the Rule 11 hearing
11 before the Magistrate Judge, the Court finds, concludes and confirms
12 that the defendant's plea is knowingly and voluntarily made and that
13 the defendant understands the charges, potential penalties and
14 consequences of his plea.

15 Mr. Anderson, does the defendant stipulate that there is
16 a factual basis to support his plea of guilty entered in this case;
17 and further, that the Court may accept the evidence as set forth in
18 the pre-sentence report, which includes the factual basis document
19 that was adopted at the Rule 11 hearing, as well as the Statement of
20 Relevant Conduct that was submitted by the Government thereafter,
21 all as establishing such factual basis?

22 MR. ANDERSON: Judge, we did have one wordsmithing
23 objection to the Government's additional Statement of Relevant
24 Conduct, but barring that, yes, we stipulate to the rest of it.

25 THE COURT: That doesn't affect whether or not there is

1 any factual basis, does there?

2 MR. ANDERSON: No, your Honor.

3 THE COURT: Mr. Gast, does the Government so stipulate?

4 MR. GAST: We do, your Honor.

5 THE COURT: Based on the stipulation of the parties and
6 the evidence as set forth in the pre-sentence report, the factual
7 basis document and the Statement of Relevant Conduct, all of which
8 have been previously reviewed by the Court, and based upon the
9 defendant's admission of guilt, the Court finds, concludes and
10 confirms that there is a factual basis for the defendant's plea.

11 Accordingly, the Court confirms the Magistrate Judge's
12 acceptance of the defendant's guilty plea and this Court has
13 accepted and does accept the defendant's plea of guilty, finds the
14 defendant is guilty and enters thereon a verdict and judgment of
15 guilty.

16 Mr. Dever, there as document that has been prepared by
17 the probation officer. The document that I'm talking about on its
18 front page has a caption on the upper left-hand side that reads,
19 United States of America v. Timothy Michael Dever. Then on the
20 upper right-hand side of the front page has a title that reads,
21 pre-sentence investigation report.

22 I think I see that your attorney has placed a copy of
23 this document in front of you there at your table. Have you seen
24 this document prior to today?

25 DEFENDANT DEVER: Just today, your Honor.

1 THE COURT: Well, prior to this proceeding here this
2 afternoon, have you had an opportunity to review this document?

3 DEFENDANT DEVER: Yes, your Honor.

4 THE COURT: Have you had an opportunity to review it with
5 your attorney?

6 DEFENDANT DEVER: Yes, your Honor.

7 THE COURT: Do you understand the contents of this
8 document?

9 DEFENDANT DEVER: Yes.

10 THE COURT: Mr. Anderson, have you had an adequate
11 opportunity to review the pre-sentence report with Mr. Dever?

12 MR. ANDERSON: I have, your Honor.

13 THE COURT: Are you satisfied that he understands the
14 contents of the pre-sentence report?

15 MR. ANDERSON: I am, your Honor.

16 THE COURT: Okay. Thank you.

17 Mr. Dever, you may take your seat.

18 With regard to the pre-sentence report, as I mentioned
19 before, there are some objections to the pre-sentence report that
20 are yet to be disposed of.

21 The first one that I want to address, Mr. Anderson, is
22 one that you have submitted and that is -- I'm needing to look for
23 what paragraph it is in. Paragraph 49 is the first time it appears.
24 It appears in each one of the counts, but it's the same in all of
25 them. The six-level enhancement for conduct evidencing an intent to

1 carry out the threat.

2 You have objected to that enhancement as it pertains to
3 each of the counts of conviction. Do you wish to be heard on that?

4 MR. ANDERSON: Judge, just briefly. Again, because this
5 is an enhancement, the Government bears the burden of proof.

6 From what I understand from the Government's position in
7 the case, there certainly was a lot of talk and there was a lot of
8 talk, and I agree it was a lot of inappropriate talk, but I didn't
9 see any actual preparations to arrest anyone, to kidnap anyone, to
10 do anything like that. Things like casing someone's home, having a
11 stash of guns or a stash of handcuffs. So I just don't know that
12 there's actually any real evidence of an intent to carry out.

13 And as I noted in the sentencing memo, you see some of
14 those Telegram channels where one of them says, well, we've been
15 waiting for five or six years for this to happen, but no arrests
16 have taken place. So, again, we have -- according to the Government
17 -- lots and lots and lots of talk, but I don't know beyond speech
18 that we ever got to anything that would suggest a real intent to
19 have the plan carried out and have anyone actually arrested
20 unlawfully.

21 So I just don't think the Government has sustained its
22 burden of proof on that, Judge.

23 THE COURT: Okay. Thank you.

24 Mr. Gast, what says the Government?

25 MR. GAST: Thank you, your Honor.

1 We believe the probation officer correctly assessed that
2 six-level enhancement and we ask the Court to find it.

3 The standard under the Guidelines is any conduct
4 evidencing an intent to carry out the threat. To be clear, the
5 standard is not that we have to show that Mr. Dever himself was
6 going to go out with handcuffs and arrest people. In fact, the
7 threat here, in essence, was that public officials needed to resign
8 or else the people, quote/unquote, will come and arrest you and that
9 PBI -- and that being Mr. Dever -- would pay them for doing so. He
10 performed multiple overt acts in furtherance of that plan to support
11 the enhancement.

12 This notion that it was just talk is, well, nonsense,
13 when you look at all the things that he did. First he launched an
14 organization complete with hats and complete with their own currency
15 in support of this organization. He provided a website with
16 instructions and document and training, including a place on that
17 website for people serving the writs to dox the victims and place
18 their personal identifying information out there so that would-be
19 bounty hunters would have that information to know who was ripe for
20 arrest.

21 He did live Q/A sessions -- in fact, Ms. Moody attended
22 some of these sessions -- where, over Telegram, where they discussed
23 how this plan would be implemented. Then rented a post office box
24 in Kingsland, Texas, where they directed that the documents would be
25 taken. They raised money to hire agents and to pay bounties. They

1 posted bounties for over 900 victims in 32 states and then doxed
2 them.

3 And at that point, once that's done, your Honor, it's out
4 in the world. At this point, it's no longer limited to PBI
5 insiders. At that point anybody who reads this and is foolish
6 enough to believe that it's true could have then gone out and acted
7 upon it and then called upon Mr. Dever to pay the bounties.

8 In addition to that, your Honor, there's evidence in the
9 PSR this was not just talk -- I'm referring to paragraph 15 in
10 particular -- where -- which references some of the things they're
11 specifically posted on the Telegram site and pinned at the top so
12 that the moderator, in this case Mr. Dever, would draw new users'
13 attention to this, to study this part in particular, where he said
14 things like, it's round-up time, and things like, I have a lot of
15 guys there just waiting to start these arrests and collect that
16 money.

17 They even went into specifics about how there would be
18 arrest teams and -- that numbered -- arrest teams of 12 and that
19 nearly 500 were ripe for arrest.

20 I would also draw the Court's attention to the video that
21 we submitted to the Court in advance of the hearing. The title
22 certainly is illustrative of our point, which is this YouTube video
23 was called, how to lawfully arrest a sheriff, a judge, a president,
24 a governor, a mayor, a Congressman, Fauci, Gates, media CEOs. All
25 are convicted in the highest court of the land. And it was a long

1 video. It was an hour and 17 minutes. That's why we submitted it
2 to the Court in advance.

3 I'm not going to go through all the things that we allege
4 unless the Court wants me to cite some, but repeated over and over
5 and over references through that video indicating that this was not
6 satire, this was not a joke, this was not aspirational, but telling
7 the followers of his channel that if they served these writs and
8 then after 30 days, if they don't do what they've been directed to
9 do, the victims, that you may begin arresting people and we will pay
10 you 10,000 or 20,000 depending on whether they were bar attorneys or
11 not. So over and over they said this.

12 Now, in the objection, the defendant cites to several --
13 hand-picked several individual messages that would seem to indicate
14 that the arrests were not imminent.

15 I would note a couple of things about that. One is that
16 all of those messages were from now deceased co-defendant, Dee
17 Thomas Murphy. Those were not statements from Mr. Dever and those
18 things cited in the objection really only say that we are not
19 imminently going to arrest them, but that this is part of the
20 process to get that done.

21 So I would submit to the Court that we have amply shown,
22 through the PSR and items submitted to the Court, that this was not
23 a joke, this was not satire. And once it left the hands of the FBI,
24 again, anyone out in the world with an AR-15 and a will to make
25 10,000 or \$20,000 could have acted upon this and at that point it

1 would have been out of Mr. Dever's hands.

2 So once it's delivered into the world, the risk that
3 someone would follow through means that we've met that standard.

4 THE COURT: Mr. Anderson, do you have anything else you
5 want to say --

6 MR. ANDERSON: Thank you, Judge. Just briefly.

7 I think it is relevant sort of what these messages are.
8 Certainly the threats were real, which is why he's pleaded guilty,
9 he's accepted responsibility for that. And what we're trying to
10 figure out, yes, this was a threat, but is it -- are we actually
11 going to carry it out?

12 And we've got lots of messages pinned up at the top from
13 D. Tom Murphy, who's, you know, in some sense, sort of the brain
14 child of a lot of this saying, we're not involved in arresting
15 people. We're not doing it yet. We've been waiting for a long
16 time.

17 And, again, Judge, according to the Government, this went
18 on for a long time. So I think their position would be a lot
19 stronger if this whole thing lasted three or four days, but we've
20 got a long period. And I know there's certainly a risk that
21 somebody out there could have found this stuff and then did
22 something about it. Somebody who wasn't sort of mentally stable,
23 found it and then decided to sort of not follow what -- these items
24 here, that we're not arresting people yet.

25 I'm not at all downplaying the risk, but we have to

1 separate the risk that somebody might have done that from, did Mr.
2 Dever intend for someone today or tomorrow or a week from now to go
3 and actually carry this out. Either him personally or Ms. Moody,
4 who's the other person charged in this case, or Mr. Murphy. And I
5 don't think there's any evidence about any actual imminent plan.
6 Again, a lot of talk about a lot of things but no real actual plans.

7 And I don't think the Government has sustained its burden
8 of proof so I would ask you to withdraw the enhancement. Obviously
9 it's relevant for 3553(a) sort of regardless as to how the
10 resolution is resolved. But, again, I don't think under the
11 Guidelines, the Government has sustained its burden here, Judge.

12 THE COURT: Well, with regard to this enhancement, first
13 of all, under 2A6.1(b)(1), it doesn't need to be conduct evidencing
14 the intent that the person charged would individually carry out the
15 threat, but merely evidencing an intent for the carrying out of the
16 threat.

17 So then it needs to be a matter of examining what it was
18 that the defendant did pursuant to the threat. In other words, in
19 addition to merely making the threat. And here, what the Government
20 relies on is the fact that in addition to the threat, there was the
21 publication of the individuals who were threatened, information
22 about where they can be found and then the posting of the
23 information regarding the bounty.

24 Further, the information whereby not only people within
25 the organization -- it was not -- that the threat was not limited

1 within the organization, but was essentially broadcast to anybody
2 who would either go by the post office and look at the posting or
3 look on the Internet and there was no limitation on that.

4 And I believe that that -- by essentially letting that
5 out of the barn door, setting in motion what could be the carrying
6 out of the threat by posting that with the bounty to the general
7 public is sufficient to carry the Government's burden that it was
8 conduct that evidenced an intent for the threat to be carried out,
9 whether that be by someone else other than the defendant, and,
10 therefore, the objection to the enhancement is overruled.

11 The next matter that we need to take up, Mr. Anderson,
12 you had an objection to -- and I need to look at what paragraph this
13 is.

14 DEFENDANT DEVER: Excuse me, your Honor. I'm gonna have
15 to dismiss my attorney or I'm gonna have to explain that -- that
16 feature on the website. There was not a list, your Honor, of any
17 people --

18 MR. ANDERSON: Mr. Dever --

19 THE COURT: Mr. Dever, you have an attorney. There's a
20 portion of this proceeding where you will have an opportunity to
21 address the Court, but with regard to the legal matters, you need to
22 speak through your attorney. That's the way this works.

23 DEFENDANT DEVER: But he's not explaining that --

24 THE COURT: Well, then if we need to, we'll take a break.
25 You can talk to him and make sure that he is fully apprised as to

1 what he needs to know, but there can't be this tag team between the
2 two of you that he says one thing and then you say something else.

3 So are you saying that you need to take a recess in this
4 proceeding so that you can talk to your attorney?

5 DEFENDANT DEVER: Yes, your Honor.

6 THE COURT: Is this something that you can do just having
7 a short discussion between the two of you there at your table or do
8 we need to have a recess and that you need to talk to him back in
9 the lock up?

10 (Attorney Anderson and the defendant, Timothy Michael Dever,
11 conferring at counsel table briefly off the record)

12 MR. ANDERSON: Judge, at the moment he's making noises
13 about wanting to be *pro se*. I think we probably should have me talk
14 to him there in the back and see if I have to make a motion for you
15 to deal with, but I would say it's probably better to have me go
16 talk with him back in the cell block back there.

17 THE COURT: Is this something that you believe that we
18 need to take a recess and you're going to be back there a while or
19 we can just wait for you after the two of you have a discussion
20 outside of the room?

21 MR. ANDERSON: Judge, I don't think there's a lot we need
22 to talk about. I mean, again, he may want me to make a motion to
23 withdraw that you would then rule upon. I'm aware of the things
24 that he wants me to say and later in the process we'll be able to
25 talk about some of those things. Right now we're dealing with legal

1 matters under the Guidelines, which are sort of different than
2 3553(a).

3 But, again, he's made a request to talk about possibly
4 going *pro se* and so I think I probably should talk with him about
5 that and see if I have a motion.

6 THE COURT: Well --

7 DEFENDANT DEVER: I'm going to have to find a different
8 attorney, your Honor.

9 THE COURT: Well, right now, Marshal, if you would go
10 ahead and take Mr. Dever back into the lock-up and allow Mr.
11 Anderson to go back there with him so they can have a relatively
12 brief discussion.

13 We're just going to wait in here for you. If this is
14 going to take a while, if you can just somehow let us know --

15 MR. ANDERSON: Yes, your Honor.

16 THE COURT: -- and then we'll take a recess to wait.

17 MR. ANDERSON: Thank you, Judge.

18 (The defendant, Timothy Michael Dever, escorted out of the courtroom
19 at 2:37 p.m.)

20 (Attorney Anderson exiting the courtroom at 2:37 p.m.)

21 (The Court at ease commencing at 2:37 p.m. and concluding
22 at 2:42 p.m.)

23 (The defendant, Timothy Michael Dever, returned to the courtroom
24 at 2:42 p.m.)

25 (Attorney Anderson returning to the courtroom at 2:42 p.m.)

1 (Open Court at 2:42 p.m.)

2 MR. ANDERSON: Thank you, your Honor.

3 At this time we're prepared to proceed and I have no
4 motion to make.

5 THE COURT: And --

6 MR. ANDERSON: I have no motion to make so I'm going to
7 proceed on as counsel.

8 THE COURT: Okay. Next matter that I want to take up
9 pertains to the next objection filed on behalf of the defendant and
10 that pertains to the four-level enhancement that was included,
11 beginning in paragraph 52. It is repeated in each of the
12 calculations regarding each of the counts.

13 Mr. Anderson, I'll -- and that pertains to the four-level
14 enhancement under 3B1.1(a) regarding a leadership role within the
15 offense. I'll hear from you.

16 MR. ANDERSON: Thank you, Judge.

17 I mean, again, I think this turns on the application
18 notes to the Guideline. We're trying to decide was Mr. Dever a
19 leader organizer of the offense and so to do that, we have to figure
20 out who the participants in the offense are. And so I think that
21 we're looking at these five counts here, which as far as I
22 understand it, is Ms. Moody and Mr. Dever --

23 THE COURT: Let me stop you for a second because if we're
24 talking about the offense conduct, you're not just talking about the
25 five counts of conviction.

1 So are you narrowing your argument too narrowly with
2 regard to this issue of the enhancement?

3 MR. ANDERSON: Well, Judge, under the Guidelines, each
4 victim is going to be grouped separately under the Guidelines and so
5 we're looking at -- you know, if there are 45 victims, we have 45
6 different buckets and I think for each of those buckets we need to
7 know who the participants are in that item there.

8 And under the application notes, I think that the only
9 participants here are going to be Ms. Moody, Mr. Dever and Mr.
10 Murphy. And so I don't see that he falls within the meaning of a
11 leader within the meaning of the application notes. He's not on
12 trial -- or he's not convicted of being in the PBI. We're talking
13 about the offense and who the participants are in the offense and I
14 just don't think that all these other things, the fact that there
15 were other people who were posting in the PBI channel -- again,
16 those might be relevant to other victims, but for any of the
17 offenses in this case, because each victim is sort of one defense, I
18 think that we're -- that there are not a sufficient number of people
19 for the Guideline to apply.

20 Of course, it's relevant for 3553(a) purposes, regardless
21 as to how the Court stacks it, but for the purposes of the
22 Application Notes 1 and 2, I just don't think that the Government
23 can show that there are a sufficient number of participants in the
24 offense.

25 Thank you, Judge.

1 THE COURT: What I want you to address -- because the
2 language under 3B1.1, for instance under sub-part (a), which is the
3 one that would apply here, if the defendant was an organizer or
4 leader of a criminal activity. It doesn't say of the count of
5 conviction. So in other words, if the count of conviction is one
6 small slice of a broader criminal activity, doesn't the language of
7 3B1.1(a) cause this to be applied with regard to the broader
8 criminal activity? And if it doesn't, how do you arrive upon that
9 point? That's what I want you to address.

10 MR. ANDERSON: Judge, I think that because this is an
11 aiding and abetting offense as opposed to actually convicting the
12 offense -- and, again, as I understand what happened, Mr. Dever and
13 Mr. Murphy sort of made these statements on YouTube and Telegram.
14 People like Ms. Moody then decided to serve writs on people sort of
15 on their own without sort of coordinating with the mother ship or
16 anything like that.

17 And so when -- I think that for him to aid and abet
18 anybody -- I mean, one, he's responsible because Ms. Moody sort of
19 followed his direction, but I don't think that the offense conduct
20 is aiding and abetting. But, again, who was being aided and abetted
21 is going to be one person for one victim and I just don't think that
22 -- again, this is a very unusual case, Judge, and I haven't found
23 any case law that would speak to this directly, you know, but this
24 is just a very unusual case as you saw from the sentencing memo.
25 But as I read the application notes, I just don't think that the

1 Government met its burden of proof in that regard because this is
2 decentralized organization. It's not, you know -- it's not like
3 your typical drug cartel or something like that where there's
4 hierarchy and people are following orders from the top. I just
5 don't think that that's sort of what's going on here.

6 He shouldn't have put this stuff out there on the
7 Internet, no dispute about that, but I just don't think that there
8 are participants for the offense within the meaning of Application
9 Note 2.

10 THE COURT: Maybe I'm just not listening to you carefully
11 enough, but I don't think you answered my question. Because, again,
12 it talks about -- even where it talks about participants, it's
13 participants in the criminal activity, not in the count of
14 conviction. And as you narrow it down to -- well, it's aiding and
15 abetting. It's aiding and abetting one particular person causing a
16 threat to one particular victim. That's not what's alleged in this
17 case.

18 I mean, yes, that's what's alleged in one particular
19 count, but where it uses the much broader term "criminal activity,"
20 how is it that you logically get to the conclusion that the criminal
21 activity is limited not only to the broader criminal activity and
22 not only to the general offense conduct, but specifically to the
23 defendant's participation within that one count of conviction? How
24 do you get it narrowed down to that? I'm not following.

25 MR. ANDERSON: So, Judge, for me, because the Guidelines

1 say that we have to -- that we're not allowed to group separate
2 victims together in this case. And, again, he's not on trial for a
3 drug conspiracy where there is an organization here. I mean --

4 THE COURT: Can I stop you for a second. Are you relying
5 entirely upon this non-grouping?

6 MR. ANDERSON: Yes, Judge. And if your Honor disagrees
7 with me about that, then I can sit down. But that's really what I'm
8 saying is under the Guidelines, that we have to view each one --
9 whether it's 45 groups or 100 groups, we're looking at who were the
10 participants in the offense, because that's what the application
11 notes say. And because we can't group them, I don't think that we
12 ever get to a sufficient number of participants.

13 But I don't know that I have anything more to add beyond
14 what I've said, Judge.

15 THE COURT: Well, that answers my question. So I
16 appreciate you -- because I noticed that you said that earlier, but
17 I did not focus on that being the cornerstone of your argument. But
18 thank you.

19 MR. ANDERSON: Thank you, Judge.

20 THE COURT: Let me turn back to Mr. Gast.

21 MR. GAST: Thank you, your Honor.

22 First of all, yes, I think the defense argument is too
23 narrow, that the term "criminal activity" includes all the relevant
24 conduct.

25 With respect to the specific argument that the defense

1 counsel makes about grouping unit increases, those are apples and
2 oranges in the Guidelines. The grouping unit increases just talk
3 about how many times you calculate whether you should add for having
4 multiple victims. That has nothing to do with the concept of
5 relevant conduct. So in this case, the Court should -- can and
6 should look at all the relevant conduct.

7 Your Honor, I've seen this enhancement applied many times
8 over the years. This is probably the first time I've seen where the
9 person to whom this enhancement is assessed actually formed an
10 organization. He formed an entity, the PBI. He promoted it, he
11 recruited for it, he named it, he created a website for it. You
12 know, we see this enhancement applied all the time in drug
13 conspiracies and things of the like where, of course, none of those
14 things are done.

15 So in this case, certainly it's amply proved. Not only
16 did he form an organization, quite literally he's selling
17 merchandise for it.

18 But in terms of the actual Guideline, your Honor, there's
19 actually two different prongs and I would submit that he would -- it
20 should be applied to him either under either or both prong.

21 The first is the participant's prong where he has to have
22 five or more participants, including himself. And, of course, there
23 are many, many more than five. We don't know exactly how many, but
24 there's 4,000 people that subscribed to the Telegram channel. There
25 have been 900 people served with these writs -- more than 900 -- in

1 32 different states. There is, of course, the three defendants in
2 this indictment. There's all the moderators on the website so --
3 all of whom would have criminal culpability here.

4 Ms. Moody talked about helping other people serve writs
5 so -- but there's also the otherwise extensive prong. And for that
6 one, you don't even have to have -- if you look at Application Note
7 4 -- I'm sorry, 3, that includes all persons involved in the course
8 of the entire offense should be considered, even if they're not
9 individually culpable.

10 So the example it gives in Application Note 3 is a fraud
11 that involved only three participants, but used the unknowing
12 services of many outsiders would be considered extensive.

13 So there's two different ways the Court could weigh it.
14 I would submit that there's more than five participants in the PBI
15 so I think the participants' prong would apply.

16 But even if it didn't, even it was just the three
17 defendants named in the indictment, they certainly used and referred
18 to and drafted and recruited and trained many, many, many more than
19 that. And their organization is national in scope. It's across 32
20 states so far so I think that there's little question that the
21 enhancement applies.

22 THE COURT: Okay. Thank you.

23 Mr. Anderson, do you have anything else you want to say?

24 MR. ANDERSON: Judge, I would note that at least to Mr.
25 Dever's mind, you know, the PBI -- I don't know that he would

1 necessarily agree that he established it. I think you saw one of
2 those posts there, that he seems to have viewed it as he more
3 discovered it, sort of God-created. And, again, this is not your
4 typical drug conspiracy or RICO organization.

5 And I just think that the makers of the Guidelines didn't
6 have this case in mind in a whole lot of ways so I would just stand
7 on what I've said previously, Judge.

8 Thank you.

9 THE COURT: Okay. I see the determination of this
10 objection as hinging on the way to construe the term "criminal
11 activity" in 3B1.1(a). Well, it's actually in every subsection of
12 3B1.1.

13 The defense argument is the term "criminal activity" is
14 actually a very narrow term that where the counts of conviction
15 cannot be grouped or should not be grouped, that it is limited to
16 the count of conviction, whereas the Government's contention is that
17 criminal activity is as broad as the offense conduct, and possibly
18 even broader than that, as particularly underscored by Application
19 Note 3.

20 The way I construe this is if 3B1.1 meant to limit that
21 to the activity of the count of conviction, it would have said so.
22 The Guideline uses the broadest possible term here, that being the
23 term "criminal activity." It's even broader than offense conduct by
24 the nature of the terminology. Therefore, I have trouble seeing the
25 narrow interpretation that is advocated by defense counsel.

1 Taking that into account, the criminal activity is
2 actually here very broad. It is the use of these documents and the
3 posting of this material. The reaching out to even unknown persons
4 regarding the offense conduct and that involved a number of people
5 and certainly was otherwise extensive. As pointed out in the record
6 at length, it involves some 32 states.

7 And in many respects, the defendant here, Mr. Dever, was
8 the hub of the wheel. He may not have been the one who founded the
9 organization, but he certainly was in the middle of that
10 organization; that he did a great deal regarding organizing it and
11 directing it and leading it. And, therefore, it -- the objection is
12 overruled because I believe that the enhancement does apply under
13 these circumstances.

14 Mr. Anderson, those are the only two objections that you
15 had that appear to me to still require some sort of need to be
16 addressed as part of this proceeding.

17 Do you have any anything else from the pre-sentence
18 report that we need to address?

19 MR. ANDERSON: Yes, Judge.

20 It's one correction that Mr. Gast and I discovered, I
21 guess it was maybe Monday as we were getting the case ready. The
22 enhancement for Counts Three and Four for the -- which one is it --
23 involving the governmental victim. Counts Three and Four don't
24 involve a governmental victim. It won't change the ultimate
25 Guideline range for grouping purposes. Instead of each of Counts

1 Three and Four counting as one unit, they'll count as a half unit.
2 So it won't actually change the ultimate Guideline range, but the
3 offense conduct for Counts Three and Four is going to be lower
4 because they were not actual government employees.

5 THE COURT: And I was aware of that. I saw that.
6 Paragraph 65 does have the six-level enhancement regarding
7 governmental official. Paragraph 72 has that same enhancement
8 whereas those two counts of conviction do not pertain to
9 governmental officials and, therefore, that six-level enhancement
10 should not apply with regard to each of those.

11 Therefore, with the calculation that is made in paragraph
12 83 for the multiple-count adjustment, Count Three -- since that
13 adjusted offense level would now be six levels below, it only
14 provides half a unit as does Count Four. Therefore, the total
15 number of multi-count units is four rather than five. However, that
16 does not change the ultimate enhancement regarding the multi-count
17 calculation in paragraph 85. Therefore, it has no effect on the
18 calculation of the Guideline range, but the statement of reasons
19 will reflect that correction to the pre-sentence report.

20 Anything else, Mr. Anderson?

21 MR. ANDERSON: No, your Honor.

22 THE COURT: Mr. Gast, you had an objection as well. That
23 one pertains not to an enhancement that is there, but an enhancement
24 that you contend should be there but is not under 3C1.1 for
25 obstruction.

1 I'll hear from you.

2 MR. GAST: Yes, your Honor.

3 And I'll be very brief because my filing really says all
4 of it but -- and I certainly recognize there is, you know, freedom
5 of speech and a freedom of protest and those things should be
6 protected. The Government sees to it that those things get
7 protected, but what the defendant proposed was different than that.

8 I mean, even in a protest if there was picket lines, if
9 the defendant wanted to recruit people to picket in front of the
10 courthouse. Even under that circumstance, they would be directed to
11 be in a place where they were not obstructing entry to the
12 courthouse or affecting the business of the court.

13 This is different though. The defendant recruited people
14 with an eye towards having them -- and he said it in several
15 different versions -- he said it in a video he put out from Mr.
16 Moody's living room, he did it in Telegram posts that are attached
17 to my objection and are already in the PSR; that his goal was to
18 have truckers come and blockade the jail so that people couldn't get
19 in and out and so that they would release the prisoner of war, is
20 what was stated on more than one occasion.

21 That is interfering with the Court's function. And what
22 I would submit to the Court is because the enhancement allows --
23 permits for attempts, it's of no moment that he did not succeed.

24 So in this case, I would submit to the Court that
25 certainly if he had succeeded and trucks did blockade the jail and

1 we were unable to remove Ms. Moody and bring her from the jail to
2 the courthouse, that would be obstructing justice and the
3 enhancement permits that in an attempt.

4 So the question is: Did the defendant attempt to do
5 that? He was very explicit in what he wanted done. And much in the
6 same way as when he doxed the victims, he put those bounties out
7 into the world. Similarly when he puts out videos promoting this,
8 when he puts out multiple posts on Telegram saying, we need the
9 truckers to come up, we need to shut down the town, we need to
10 blockade the jail and demand the release of the prisoner. That is
11 attempting to obstruct the function of the court. Now, it was
12 fortunate for everyone involved that that did not happen, but he
13 tried to make it happen.

14 And so, therefore, the obstruction of justice enhancement
15 should apply since it covers attempts.

16 THE COURT: Okay. Thank you.

17 Mr. Anderson.

18 MR. ANDERSON: Thank you, Judge.

19 Again, here I would agree with probation. Obviously we
20 are talking about freedom of speech. And as I noted in my response
21 to the Government's objection, we are looking for imminent threats
22 of violence.

23 I would disagree with Mr. Gast this even qualifies as an
24 attempt. What I heard was a lot of words, but I don't know that
25 words themselves are an attempt. I think attempt requires an overt

1 act and I just don't know that we've gotten that.

2 There's the issue about -- that Mr. Dever hadn't even yet
3 been charged in this case so he's, you know, not even yet a
4 defendant in this case.

5 And I would stand on my response and on the probation
6 officer's concurrence with my response.

7 THE COURT: I think this particular objection raises a
8 very interesting question as to what constitutes an attempt and can
9 mere words constitute an attempt.

10 It is undisputed in the record that even if this were an
11 attempt, it was a wholly unsuccessful attempt because none of it,
12 not even a portion of it, materialized. And, therefore, I think
13 that the words used can be construed as hyperbole and that,
14 therefore, as -- in the rule of lenity, that mere hyperbole cannot
15 rise to the level of an attempt, therefore, I will overrule the
16 objection.

17 As with all of my rulings regarding the objections on the
18 calculations of the Guidelines though, that is without prejudice to
19 any argument regarding variances, departures, appropriate sentence
20 for the imperfect application of any of these particular
21 enhancements, but I will overrule that objection.

22 Are there any other issues regarding the pre-sentence
23 report that we need to address regarding Mr. Dever?

24 MR. ANDERSON: Not at this time, Judge.

25 THE COURT: Anything for the Government?

1 MR. GAST: No, your Honor.

2 THE COURT: With that, the Court will accept the
3 pre-sentence report as written, except for the items that I
4 mentioned earlier regarding paragraphs 65, 72 and 83.

5 With that, the Court will find the total offense level in
6 this case is level 31 and the Criminal History Category is category
7 I.

8 Based on that total offense level and Criminal History
9 Category, the Court will conclude as a matter of law that the
10 Guideline range that applies in this case calls for a term of
11 imprisonment between 108 and 135 months.

12 Mr. Anderson, did I calculate that correctly?

13 MR. ANDERSON: Yes, your Honor.

14 THE COURT: Do you agree, Mr. Gast?

15 MR. GAST: Yes, your Honor.

16 THE COURT: Mr. Gast, what is the situation with regard
17 to the victims who wish to be heard?

18 MR. GAST: Your Honor, we have four victims present here
19 that would like to address the Court. Mr. Thorneloe has spoken to
20 them about, you know, how that would proceed. I'm going to yield to
21 him to let him call them up if this is the appropriate time for
22 that.

23 THE COURT: Is there anything that we need to address
24 before we move on to the victim impact statements?

25 MR. GAST: Not from the Government, your Honor.

1 THE COURT: Anything for either of the defendants?

2 MS. JONES: No, sir, your Honor.

3 MR. ANDERSON: No, your Honor.

4 THE COURT: Okay. Well, proceed and call the first
5 victim up.

6 MR. THORNELOE: Thank you, your Honor.

7 First we have Ms. Julia Boyd-Freeman and she would like
8 to come forward. She's one of the victims in the case and she'd
9 like to present her statement.

10 THE COURT: Please come forward. Stand there next to Mr.
11 Thorneloe.

12 And, again, I wanted to reiterate, this is the
13 opportunity for the victims to make a statement to the Court about
14 how these crimes have impacted them, it's not an opportunity to play
15 lawyer or to argue for any particular sentence or anything like
16 that. It is to provide information to the Court about the impact
17 that this has had on the victims.

18 So please state your name for the record and then you may
19 proceed.

20 MS. BOYD-FREEMAN: Julia Boyd-Freeman. It's B-O-Y-D
21 F-R-E-E-M-A-N.

22 Thank you, your Honor, and members of the court for
23 allowing me to speak today.

24 This crime has deeply impacted my life, the lives of my
25 family, friends and co-workers. That fateful Saturday in July 2022

1 I will never forget. A friend called and said there was a warrant
2 against me posted in the post office in Waynesville, along with
3 other elected officials, judges and law enforcement officers.

4 At first I thought it was a joke. That was until I
5 contacted our local sheriff's department who said it was not a real
6 warrant, but definitely a real threat.

7 I've been an elected official for nearly 12 years and the
8 Director of Haywood County's Domestic Violence and Sexual Assault
9 Agency for 26 years. I've been called names, I've been threatened
10 by abusers, but never nothing -- anything to this extent.

11 To this day I live in fear. As things developed and as
12 threats of a bounty and possible kidnapping emerged and the FBI
13 contacted me, that confirmed that fear. All of my addresses were
14 posted on the Internet, including the confidential location of my
15 agency's domestic violence emergency shelter for battered women and
16 children.

17 During those several months prior to any arrests being
18 made, my family, friends and co-workers became hypervigilant and
19 coming up with ways to protect me, including offering to hide me in
20 a secret location.

21 To this day, the psychological damage is real. I am now
22 always looking over my shoulder. I don't go out nearly as much as I
23 did and any vehicle unknown to me that comes up my driveway puts me
24 in a panic.

25 I thought long and hard about speaking today. Would I

1 once again become a target? But I thought how for 26 years I've
2 asked domestic violence and sexual assault victims to stand up
3 against those who have harmed them. So I stand here to say I have
4 been harmed, but I am not broken and knowing that justice will be
5 served.

6 Thank you, your Honor. Thank you, members of the court.

7 THE COURT: Thank you, ma'am.

8 MR. THORNELOE: Your Honor, next we have Ms. Donna Forga
9 and she is also in a victim in this case and would like to address
10 the Court.

11 THE COURT: Please state your name and then you may
12 proceed.

13 MS. DONNA FORGAY: Good afternoon, your Honor. My name
14 is Donna Forga and I am a District Court Judge in the 30th Judicial
15 District, which is composed of Haywood, Jackson, Macon, Swain, Clay,
16 Graham and Cherokee Counties. I'm here with Judge Wijewickrama who
17 is also serving with me.

18 Judge Wijewickrama and I make difficult decisions every
19 day, but the reason we're here today is because we've done things
20 that everybody in this room did today. We brushed our teeth, we
21 took a shower, we flushed a toilet, we filled a water bottle, we
22 discharged water. And because of that, we were accused of
23 attempting murder by toxic pollution. That's hard for me to take.

24 As to the defendant, Mr. Dever, I don't know anything
25 about him. In fact, I haven't seen him before he walked into the

1 courtroom today, but Ms. Moody is a different matter.

2 And I may, if you'll forgive me, refer to her from time
3 to time by Ms. Gibson because we have a long history. Ms. Gibson
4 went to high school with my younger sister. I was in high school
5 with her husband. I was in my high school chorus with her husband.
6 And, in fact, up until just recently, she played the piano at a
7 little bitty Baptist church in Maggie Valley where my family has
8 attended for more than 40 years.

9 I have never known Ms. Gibson to be anything other than
10 kind, engaging and a genuinely beautiful person and that is why this
11 is so hard, your Honor. I would never and still would not think
12 that Ms. Gibson would ever try to act to collect the bounty that was
13 placed on me or to proceed with a warrantless arrest; but my
14 question is who else is emboldened by those actions to act that way?

15 I have taken children away from families where they were
16 abused, I've entered those domestic violence protective orders, I've
17 set bonds in cases for murderers. And who would take those
18 documents as they've been presented and use them as a reason to take
19 advantage of already difficult feelings against me?

20 When I was first served with -- served with that writ of
21 execution, the first thing that I noticed was that it had my home
22 address on it. There are lots of reports that district court judges
23 have to file that even our state government understands that it's
24 not appropriate for our home address to be there because of the
25 danger to us because of the job that we do.

1 The second thing I noticed was that there was a lab
2 report attached that was a sample of water. And, of course, the
3 first thing that crossed my mind then was had someone been to my
4 home and collected that water sample that I didn't know about?

5 Last August I went to my 41st class reunion and because
6 ours was delayed by COVID, the class that it was also their 40th
7 were there as well. So there were a lot of people there that I
8 didn't know. A couple hundred people to be exact.

9 There was one particular gentleman who came up that I
10 didn't recognize that sat at a table with me and the topic of these
11 documents came up. As we were talking with others at the table, it
12 became apparent to me that some of the people had all the
13 information about these documents from the news. This one
14 gentleman, however, knew way too much about what was in there. Way
15 too much about what was there that had nothing to do with the news
16 story.

17 So when he made a comment to me about taking control of
18 my person or my property to collect that reward and laughed about
19 it, I left and I went home. And after that I became very reluctant
20 to go to my grandchildren's events. I have 12 grandkids from 9 to
21 23. I was reluctant to attend their sports events. I had to think
22 hard about going to their high school graduations because I simply
23 didn't know who else might be seeking that \$20,000 reward. My job
24 provides protection for me but not for my family.

25 Making this even more difficult with my home address out

1 there for everyone to see was that in 2018 my husband was diagnosed
2 with stage 4 esophageal cancer. He stays at home by himself, many
3 times heavily, heavily medicated.

4 And one of those particular days as I was driving to do
5 my job in Cherokee County, as I came up to Nantahala where I knew
6 there was no cell signal, the last thing he said to me before I hit
7 that block in the cell signal was, hold on, honey, there's somebody
8 at the door, just as I lost that signal.

9 From there I had to drive through Nantahala Gorge over
10 Topton, past Granny Squirrel before I came to the four-lane where I
11 knew I would have signal again. And by the time I was able to get
12 him on the phone, my stomach was in knots. I was sick. And I will
13 tell you, your Honor, I am very rarely, if ever, afraid, but until I
14 got to hear his voice that time, I was a complete basket case. I
15 was sweating profusely and physically sick because the first thing
16 that crossed my mind is: Has somebody been to my house to take
17 advantage of my husband?

18 I can accept all the risks to me, your Honor. I took
19 those risks when I took my oath 13 years ago to be a judge. I take
20 that responsibility every day that I make these difficult decisions,
21 but there's no reason that my family should live under this sort of
22 threat.

23 So what these defendants have taken from me is my peace,
24 the peace that I can go about and do my job, and at least have the
25 risk against me be those that you would expect from day-to-day. And

1 with all due respect, your Honor, having worn that black robe, I
2 respectfully say that there is nothing that you can do to give that
3 back to me.

4 Thank you.

5 THE COURT: Okay. Thank you.

6 MR. THORNELOE: Your Honor, next the Government would
7 call Mr. Anthony Sutton. He is a victim in the case and he would
8 like to give a victim impact statement.

9 MR. ANTHONY SUTTON: Thank you. My name is Anthony
10 Sutton. I'm a council member for the Town of Waynesville.

11 The perpetrators' calculated and malicious intentions to
12 cause me harm has forever shattered my sense of security and peace
13 of mind.

14 Beyond the direct impact to me, my loved ones have also
15 suffered tremendously. The thought of what could have happened to
16 me haunts them and they, too, now live in constant worry and fear
17 for my safety. Witnessing their pain and helplessness is an
18 additional burden I carry. Knowing that my trauma has deeply
19 affected those closest to me.

20 While I'm thankful that law enforcement intervened in
21 time to prevent the full realization of this horrific crime, I
22 remain forever changed by the event that transpired. The sense of
23 security and freedom that I once took for granted has been
24 shattered, replaced by a haunting feeling of vulnerability and
25 helplessness.

1 I humbly request that the Court consider the gravity of
2 this crime and the profound impact it has had on my life and the
3 lives of my loved ones when determining the appropriate sentencing
4 for the perpetrator. I hope that justice will be served not only to
5 hold the offender accountable but also to prevent others from
6 experiencing the terror and trauma that I have endured.

7 Thank you for allowing me the opportunity to share my
8 victim impact statement. I trust that the Court will carefully
9 consider the lasting consequences of this crime in delivering a just
10 and appropriate sentence.

11 Thank you.

12 THE COURT: Thank you.

13 MR. THORNELOE: And, your Honor, finally we have Mr. Roy
14 Wijewickrama and he would like to give a victim impact. He is also
15 a victim in this case.

16 MR. ROY WIJEWICKRAMA: Good afternoon, your Honor. My
17 name is Roy Wijewickrama. I serve with Judge Forga on the District
18 Court bench in the 30th Judicial District and I also serve as the
19 Chief District Court Judge for our seven western counties.

20 As Judge Forga indicated earlier, when we signed up for
21 this job and we decided to run, we practiced for many years. We
22 understood that there were certain risks. We make decisions every
23 day where we have to remove children from homes, sentence criminal
24 defendants. I understand why some of those individuals may become
25 upset with us. Doesn't make it right, but I get that. I understand

1 it, but what we're dealing with here today, I just don't understand.
2 I've tried to wrap my head around it. I don't understand what kind
3 of fantasyland some people are living in.

4 I recall the day that I -- I hate to even use the term
5 being served with this, when I received this paperwork, this writ
6 that essentially called for me to be -- and two of my colleagues to
7 be kidnapped. I was speechless. It was initially brought to my
8 attention from our sheriff at the time, Sheriff Gregg Christopher.
9 It was actually sent to our Superior Court judges via fax.

10 So after letting it sink in one afternoon last summer, I
11 immediately called my wife, Jody Wijewickrama, who is here in the
12 court with me today, and I asked her if the kids were outside -- I
13 have three children. And I asked her -- and in fact they were, two
14 of them were outside playing basketball -- and I said, get them
15 inside immediately.

16 And from that day forward, because these individuals had
17 plastered our address on this web site, which also was part of this
18 so called writ, our home address was and is available to thousands
19 of these individuals and that is very troubling. And I understand
20 we're public officials, I get that, but this -- in this context for
21 our home address, for my bar ID number to be out there, to be doxed,
22 if you will, in the fashion that I was, my colleagues were, it's
23 beyond troubling and it has had a profound impact on myself, my
24 wife, my kids. We've had a hard time even trying to explain to them
25 -- our oldest child understands a little more, but it has been --

1 it's changed the way we live.

2 Like I said, I understand there's some risks that are
3 associated with this job, but I never once imagined that myself, my
4 colleagues, their families and my family would be placed in such a
5 predicament.

6 I don't know either of the defendants. I know of Ms.
7 Moody. From what I understand, she had a wonderful reputation in
8 our community. Her family has a wonderful reputation. And I can
9 say it is shocking to many in the community that we're even here.

10 But I just want the Court to know that it has had a huge
11 impact on our family and every day now I have to -- we always have
12 to be concerned about our children, but even more so now with this
13 current environment we're living in, and then these defendants
14 essentially pouring fuel on the fire, if you will, it's very -- it's
15 very troubling.

16 But despite all that, I still have faith in the rule of
17 law and I hope they understand that and we'll certainly respect Your
18 Honor's decision.

19 And I appreciate you giving me the opportunity to speak
20 today.

21 THE COURT: Thank you.

22 MR. THORNELOE: Your Honor, those are all the victims
23 that will be making impact statements here in person. Of course,
24 the Court already has several written victim impact statements and
25 we know the Court will consider those as well.

1 THE COURT: And just to make sure that I have a clear
2 understanding, there were several that were attached to the
3 pre-sentence report, but only one that was filed thereafter; is that
4 correct?

5 MR. THORNELOE: Yes, your Honor. I believe one came in
6 this week as a supplement to the PSR and that's the one I think
7 you're referring to.

8 THE COURT: Is there anything else that we need to
9 address before we move on to the arguments of the appropriate
10 sentence to impose with regard to each of these cases?

11 MR. GAST: Not from the Government, your Honor.

12 MS. JONES: Not from Mrs. Moody, your Honor.

13 MR. ANDERSON: No, your Honor.

14 THE COURT: Okay. Ms. Jones, let me turn to you. What
15 is the appropriate sentence that I should impose here with regard to
16 Ms. Moody?

17 I've read your brief. As you've heard me say many times,
18 you don't need to repeat what you've already had me read, but I want
19 to give you the opportunity to advocate further for your client in
20 supplement to what you have submitted in writing.

21 MS. JONES: Thank you, your Honor.

22 I will try not to repeat my brief, but with regard to our
23 general request, we are asking for a downward variance or variances
24 to a total offense level of 13, which with Ms. Moody's Criminal
25 History Category I, would be in Zone C, 12 to 18 months. And within

1 that range we're asking this Court for a sentence of time served and
2 supervised release with a term of home detention.

3 The Court knows, but with a sentence falling in Zone C
4 like that, the Court can impose a sentence of imprisonment with
5 supervised release with a condition that substitutes home detention.
6 There has to be at least one half of the minimum term satisfied by a
7 term of imprisonment. As Ms. Moody has been in custody over
8 10 months, that would be satisfied. But we are asking for that home
9 detention to, I think, bridge the gap to get to that 12 months.

10 Your Honor, as a preliminary matter, I understand that
11 Ms. Moody got involved in this offense at a very vulnerable time in
12 her life and I tried to express that to the Court in the sentencing
13 memo. She was separated from her church community, she was no
14 longer working, she was experiencing family turmoil.

15 And I don't know that she recognized it at the time, but
16 it seems to me that she was searching for a community. It's not an
17 excuse, but I think it's an explanation for how this person, who I
18 think even people here today have said, has a reputation as a
19 beautiful person, a lovely person. But that's how I think she got
20 plugged into the FBI or Peoples Bureau of Investigation.

21 Ms. Moody really had not been involved in social media
22 except for LinkedIn, I understand, so she was really naive to these
23 things. And so, you know, there was a point in her case where I was
24 looking at her situation as, is this a person who had abhorrent
25 conduct, something out of the ordinary for her, and I don't think

1 she qualifies. There were 57 folks, all these different writs.
2 However, I do think it's mitigating to some degree that nearly all
3 of her character letters, nearly all the people who are friends and
4 family who wrote to the Court said, this is out of character. I
5 think that's been said today. I do think one of the filed --
6 recently-filed victim impact statements say the same thing.

7 She's a 57-year-old grandmother. She's been married for
8 34 years. Never spent more than three days without seeing her
9 husband. She had a strong work history, which we don't see in this
10 court very often, working as an appraiser and in various family
11 positions.

12 And I also wanted to make a legal point, while this isn't
13 an objection -- we are dropping obviously our objection to the
14 obstruction of justice increase and it does typically apply because
15 I think the application notes say if someone doesn't -- willfully
16 doesn't come to a court hearing, they should get the increase. So I
17 thought we needed to embrace that, but I think there was really *de*
18 *minimis* obstruction in this case.

19 And so far as that, she didn't come to the arraignment.
20 Five hours later that same day, she was arrested. So in my mind,
21 she just kind of barely qualifies for that.

22 And as I explained in the sentencing memo, I wanted it to
23 be clear that I do think at that time Ms. Moody was in the thrall of
24 this organization, it's not an excuse, but I think that's why that
25 happened.

1 And I wanted to at least try to explain to the Court how
2 much Ms. Moody really transformed since this case began. I think
3 who she was at the arraignment is not the person that she is today,
4 but isn't even the person that she was when she was representing
5 herself and decided to plead guilty and resolved her case with the
6 Government. I mean, I think that that shows the change in her
7 thinking, her acceptance of responsibility and her wanting to get on
8 to the right track.

9 There were numerous motions filed in her case as the case
10 began, which I'm sure the Court is aware of. All of those went away
11 with her plea. She pled guilty. And that was before any of the
12 other defendants had made it to this district. So I do think that
13 that's important and I wanted to highlight that.

14 With regard to the bases for our downward variance
15 request, I'll just highlight some of those. I think that it's
16 evident Ms. Moody has been involved in charitable service and good
17 works. And I tried to include character letters that showed that
18 from ministers, other church members.

19 And Ms. Moody's service to the community involved playing
20 the piano, playing the organ for her church and even for other
21 churches. She played for revivals, she played for funerals. I
22 think that's really notable.

23 I did bring to court, just at least to kind of hold up,
24 her family did make numerous CDs when she was involved in making
25 Christian music throughout her life. I have six CDs here that she

1 had made with numerous groups and even a record, I think before the
2 time of CDs, but I thought it was important to show the Court that
3 unlike many defendants coming before this Court, Ms. Moody is not
4 someone who found religion at the jail. She is someone who has been
5 very committed to her religion throughout her life.

6 And even at the jail, I wanted to highlight for the Court
7 that Ms. Moody has essentially been like a trustee. She's been a
8 real model inmate. I can see it when guards bring her out to meet
9 with me, the way that they address her, the way that they deal with
10 her. She's a different type of person than many coming before the
11 court. But she was volunteering to clean bathrooms, clean up trays.
12 Do all these things in this foreign environment that she's never
13 been in before.

14 Ms. Moody's mental and emotional condition I think is
15 another basis for downward variance that we're asking the Court to
16 consider. We are not -- I would note that as our expert explained
17 in the report to the Court, Ms. Moody's been diagnosed with anxiety
18 and depression and there's some unknowns. I think that our expert
19 said, there are some things going on with Ms. Moody that can't
20 adequately be explained by the symptoms that she's exhibiting that
21 don't fit into anxiety and depression. There are some other things
22 going on, but I think that those things going on contributed to her
23 being particularly vulnerable to committing the offense here.

24 She was naive, as I said, and she really wanted to do
25 good things for her community. And I think some of her church work,

1 some of her other community involvement was not available during the
2 pandemic. So when she learned about what she believed to be this
3 effort to fight child trafficking, to prevent water pollution, she
4 bought into that -- and I get -- I understand the Government's
5 argument that the writs don't really talk about water pollution,
6 they're not talking about child trafficking. So it may seem
7 insincere to make this argument, but I'll note -- and I do think it
8 at least somewhat comes through in the record here in the filings to
9 the Court -- the Peoples Bureau of Investigation online did talk
10 about the water pollution and did talk about child trafficking and
11 some of these other issues. And I think Ms. Moody bought into it
12 kind of as a whole thing, as strange as it may seem.

13 And I've worked in various ways to wrap my mind around,
14 how does this writ going to this person change water pollution?
15 This person has nothing to do with the water? There was this ethos,
16 this belief system, this organization online that was purporting to
17 deal with these things.

18 And I think that we all can agree that child trafficking
19 is wrong, we all can agree that we want quality water. And I think
20 Ms. Moody's efforts at trying to do the right thing got channeled
21 into this.

22 And I did want to point out, and I think it's fairly
23 apparent, a lot of -- in terms of Ms. Moody's beliefs and what she
24 was thinking at this time, it's a little difficult to attribute
25 every part of the writs to her insofar as -- not that she's not

1 pleading guilty, not that she didn't file them, but she didn't
2 produce these.

3 There were a lot of materials produced by the PBI, how to
4 serve writs, you know, pages of instructions, instructional videos,
5 a website, merchandise, et cetera, that Ms. Moody played no role in.
6 And so, you know, I think that may be where some of this gap is
7 that, you know, if Moody -- Ms. Moody had drafted a writ and it
8 didn't say anything about child trafficking or water, okay, I can
9 see that. But I think here were these things -- she took these
10 tools to try to address these problems and had this genuine but
11 obviously very naive idea that folks could sign these writs in this
12 sort of re-oath procedure that I don't fully understand, but that
13 that would resolve it. That would be the end of things, which
14 obviously certainly today we know that that's not correct and that
15 wasn't correct before.

16 I also wanted to highlight Ms. Moody's remorse as a basis
17 for a downward variance and I'll be brief on that point. I think
18 the motion for departure today I think indicated reasons that the
19 Court can consider regarding her remorse. We're joining in that
20 motion, even today we're sitting at the same table with a
21 co-defendant.

22 And as I noted, I've never seen a situation where a
23 defendant represented herself and worked out her case, resolved it
24 with a plea, embraced her responsibility, accepted her
25 responsibility, as Ms. Moody has.

1 In fact, I thought maybe there were some legal arguments
2 to be made in her case and, you know, at that point she just jumped
3 in and said, I want to do the right thing. I want to accept
4 responsibility, I've done wrong. And I think that that's
5 significant.

6 The Court also will be hearing from Ms. Moody in an
7 allocution. I think the Court will hear from Ms. Moody about her
8 remorse. I even could see today, watching what's been happening in
9 the courtroom, she's just been anguished and feels terrible for all
10 the harm that she's caused.

11 Your Honor, overall, we're requesting the sentence
12 reduction based on those arguments, but obviously the Court can get
13 there any way the Court sees fit, but I thought it was very
14 important to note that Ms. Moody is -- she's just so much more than
15 this offense.

16 She spent a lifetime -- I think one of the character
17 letters said 50 plus years -- being a good citizen. So while this
18 offense obviously has caused tremendous harm and she recognizes
19 that, that's not who she is and she's tried to move forward from
20 that and she hopes that her time in jail has made up for that.

21 Especially from the tradition that Ms. Moody has come
22 from, being deeply involved in the church -- love your neighbor as
23 yourself -- this in court -- who Ms. Moody appears to be in court
24 today in this jumpsuit at the jail is not who she is. It's not the
25 way she's intended to treat her neighbor ever within her life. She

1 wants to get back out of custody and make up for the harm that she
2 caused.

3 I can tell the Court that she's had some very unusually
4 difficult conditions in the jail, which everyone has. And I
5 acknowledged that in the sentencing memo, everyone misses Mother's
6 Day, everyone misses Christmas. But at one point she was housed
7 with someone charged with a really horrific murder. She was a
8 cellmate of someone charged with this murder who was extremely
9 mentally ill. I was looking up the case online and I was horrified.
10 And I know you commit a crime, that you put yourself in that
11 situation, but I think for someone like Ms. Moody who's never been
12 in trouble before except for a speeding ticket, this has been a
13 very, very serious punishment.

14 She was bullied by people at the jail who look at her and
15 know that this is not the place that she normally is. And at one
16 point at the jail when I was comforting her, I just -- I would have
17 to say I just felt so much that this is my calling because she has
18 suffered, I would say more so than most of my clients, was so in
19 need of comfort. And I just wanted to highlight that for the Court
20 that Ms. Moody is a different type of person.

21 So this Court can impose a requested variance, time
22 served, on the bases I've cited or others. She obviously has strong
23 community ties, she has had pre-sentence rehabilitation. And so
24 we're asking for time served with the condition that at least two
25 months of her sentence or her supervised release be served on home

1 detention.

2 I have absolutely no doubt that Ms. Moody has been a
3 hundred percent deterred from this conduct. The Court will never
4 have to worry about her again.

5 In terms of general deterrence -- and I recognize that
6 can be a concern here -- but I think with regard to Ms. Moody, I do
7 think that there could be some general deterrence even with this
8 sentence because it sends a message, you will have to do some jail
9 time. You do anything like this, you will have to do some jail
10 time. There are opportunities for deterrence involving the
11 co-defendant in this case as well.

12 And I also wanted to note for the Court that Ms. Moody
13 has absolutely no objection to the request in the recent victim
14 impact statement of no contact with victims' families. She has zero
15 objection to that. And is sincerely sorry for all the harm that
16 she's caused.

17 THE COURT: Okay. Thank you.

18 Mr. Gast, what's the position of the Government? And as
19 with what I told Ms. Jones, obviously you've submitted a sentencing
20 memorandum, but I'll give you the opportunity to speak in supplement
21 to what you've already filed in writing.

22 MR. GAST: Thank you, your Honor. And I, too, will
23 endeavor not to retread that ground too much.

24 Your Honor, the Government's recommendation is a
25 Guideline sentence, which the current range, as the Court indicated

1 by reference to the Government's motion, is 24 to 30 months. We
2 recommend that range because that is a mitigated range.

3 Most of the things -- well, really all of the things that
4 Ms. Jones indicated as mitigators in this case were factors that the
5 Government considered when making this particular offer to the
6 defendant. So in essence, we've priced it at that point precisely
7 because of all those things.

8 I'll start just -- and, of course, I went into detail in
9 the sentencing memo so I won't repeat that here -- but this crime
10 was very serious and I can't say it any more adeptly than the
11 victims did when they allocuted to the Court. And they are just
12 four of the 57 or so that this victim -- this defendant, rather, was
13 directly responsible for. And then there's another 850 or so out in
14 the country that have been victimized by the same organization.

15 It is -- these involve public bounties, they were
16 threatened actually twice. Once by the receipt of the writ and then
17 again when doxed. And really, in Ms. Moody's case, a third time
18 when she posted notices in the post office. That's just a lot of
19 harm to a lot of people in this community and others across the
20 country.

21 The nature of the group that targeted them being an
22 anonymous organization makes this a much worse threat than the
23 typical threat that we would normally see under an 875(c) charge.
24 And the fact that they were public servants, too, is -- just makes
25 this all the more atrocious.

1 And, you know, for all the patriotic rhetoric behind the
2 writs, it was just so un-American. This notion that you've been
3 convicted by a court you've never met, that you've never heard of
4 and now all you can do is plead for mercy before us. I mean, you
5 know, anyone who would endorse that philosophy in the name of
6 patriotism needs to get their heads right.

7 It's a very serious crime and ordinarily this would be
8 one that we would be seeking an upward departure or variance in if
9 for -- just the number of victims alone that we would normally be
10 asking for upward variance or departure in this case, as we did with
11 Mr. Dever, who sits in a very different posture than Ms. Moody. So
12 the fact that we have not is a mitigated sentence in this case.
13 That we considered all that when making the plea offer that we did.

14 I want to point out, too, that Ms. Moody -- one
15 significant difference between Ms. Moody and Mr. Dever is that Ms.
16 Moody was the one who actually selected the targets. I mean, in
17 this case, you know, Mr. Dever was the one that encouraged people,
18 go after the sheriffs first because once you get the sheriff, we can
19 get their badges and their guns and their keys to the jail and that
20 will help us to facilitate phase II of the plan, which is to arrest
21 everyone else in government.

22 But it was Ms. Moody who chose our local victims or the
23 57 in her indictment. Almost none of them had anything to do with
24 water quality, by the way. Some of them in particular were
25 healthcare workers who angered her because she was required to wear

1 a mask during -- at the hospital during the pandemic. That's why
2 they were targeted.

3 The Court heard the voicemails that she left for the
4 Haywood County Registry of Deeds, whom she knew personally --
5 friends, much like Judge Forga -- and those messages were not about
6 water in particular. Instead they were talking about her lofty
7 position over them and over the rest of government and about how the
8 Government should be removed. One quote was: The Government is our
9 enemy and you're in it and if you're in the Government, you're
10 guilty of all their crimes against humanity. You know, this is the
11 -- what motivated these things and she was the one that picked the
12 victims.

13 And what's even worse is she's -- some of the people she
14 selected were people whom she knew personally and that didn't stop
15 her from making victims out of them.

16 Ms. Jones referred to the re-oath thing -- you know, that
17 perhaps Ms. Moody naively thought if they just do the re-oath, that
18 they won't actually be harmed. There's a passage, it's on my pros
19 memo on page 13 that's a quote from one of those voicemails to the
20 Register of Deeds. I'll read the relevant portion of it, but in
21 that voicemail she left, she said: If you continue to serve in
22 government when the people have fired you or arrested you or served
23 you papers, you're committing more felonies by the day.

24 Now, she intended it as a warning to her friend, but what
25 she was also saying is that she understood that arrests would follow

1 if people didn't do what was demanded of them in this ridiculous
2 piece of paper. So it is not accurate to say that she did not know
3 that arrests might follow of these people.

4 It is also not accurate to say that the PBI solely drew
5 her astray or that she was particularly vulnerable to the PBI. I
6 hate to give Mr. Dever too much credit right before we sentence him
7 as well, but I think Mr. Dever's philosophy found fertile soil in
8 Ms. Moody and there's a lot of evidence of that. Ms. Moody -- you
9 know, some of the support letters that were written for Ms. Moody
10 used words like brain washed or mislead or coerced by some bad
11 actors.

12 But what's clear from the record and her history is that,
13 you know, the entirety of 2022, she was going to lots of websites,
14 it wasn't just the PBI websites. She was on Telegram to lots of
15 different places doing a lot of different things. She mentioned in
16 the pros memo that she went to that Gettysburg conference. That had
17 nothing to do with the PBI, that was something separate. It was
18 all, you know, sovereign citizen-type ideology and certainly could
19 be painted with that broad-brush. But it was not like, you know,
20 the PBI got ahold of her and then transformed this otherwise, you
21 know, rational American citizen into a PBI follower.

22 She and her husband both had a local reputation of being
23 vocal about QAnon conspiracy and beliefs. They had posted things on
24 the doors to their home that warned law enforcement about not having
25 jurisdiction over their home.

1 In June and July of 2022, she and her husband both filed
2 a lot of different things with the clerks of -- the clerks of court
3 and with the boards of election declaring themselves American
4 Nationalists to get off the government books essentially. They
5 sought to remove themselves from the voter roles because they were
6 alleging constructive fraud, denying that they were citizens and
7 accusing the Board of Election of treason and terrorism.

8 She filed, in July, papers to annul her marriage and
9 reject the state's authority over the marriage. She wasn't trying
10 to divorce Mr. Moody. They're still very happily married as far as
11 I know, but it was -- they were trying to get out from under the
12 state rubric and that's why they were filing these papers to annul
13 their marriage.

14 The -- in July she wrote a letter to the military asking
15 them to intervene domestically to remove government officials.

16 I say all this to say that this is not PBI stuff, this is
17 just separate stuff. So she was self-radicalizing, she was looking
18 for these things.

19 It's unfortunate, I mean -- and I'm not suggesting she
20 was the progenitor of these ideas, but it wasn't -- she was not
21 simply a passive victim of Mr. Dever. She was already pursuing
22 similar philosophies before finding PBI's website.

23 So this brainwashing, to the extent that it occurred, it
24 came from multiple different sources, but she was also passing the
25 ideas along, too. She was not a passive recipient of this. Again,

1 I've talked about the filings. She was assisting at least one other
2 person known to the Government with serving the writs.

3 So, you know, I've thought a lot about this is that, you
4 know, do we only punish the progenitor of an idea and I don't think
5 that's appropriate. I mean, at some point you have to hold adult
6 people of sound mind responsible for the ideas that they endorse and
7 embrace and then propagate. And in this case, the defendant
8 full-throatedly embraced this and other similar conspiracy theories
9 and spread them.

10 I have no doubt that she has a strong Christian faith and
11 had a strong moral compass, but that also means that she should have
12 known better than to threaten her neighbors and to threaten her
13 friends and to threaten strangers across this -- across this
14 district, across this state and some out of the state.

15 It really doesn't make sense to limit punishment to only
16 people who came up with a bad idea and then convinced others to do
17 it. I mean, if we have three people that rob a bank at gunpoint, we
18 don't even bother to ask whose idea was it. At a certain point, it
19 doesn't matter whose idea it was. If all three of you agree to do
20 it, it really doesn't matter if one persuaded the others so much,
21 except for perhaps that person might get a leadership enhancement,
22 which the Guidelines already take into account in this case.

23 And conspiracy theorists exist in sufficient numbers that
24 we cannot afford to withhold punishment simply because they were
25 exposed to bad ideas.

1 I mean, this Court every day sees a parade of people that
2 engaged in bad ideas. Dealing drugs or using drugs is a bad idea.
3 Robbing banks is a bad idea. Committing fraud is a bad idea. So is
4 threatening people with arrest and the forfeiture of all their
5 assets and putting cash bounties on their heads.

6 With respect to her psychological report. I've reviewed
7 it, I know the Court has. I would suggest to the Court her
8 psychological report, frankly, is rather unremarkable. I think that
9 very few people live lives free from adversity and trauma and Ms.
10 Moody is no exception. But as compared to reports that this Court
11 normally sees at sentencing hearings, I mean, hers is a pretty
12 ordinary person's psychological report. And as such, I would submit
13 that it doesn't have mitigating value in this case.

14 But what I would say, your Honor, is -- again, to bring
15 back to where I started, which is the Government has already
16 accounted for almost -- all the mitigators that have been presented
17 to the Court and she has gotten a significant amount of benefit
18 already from the plea agreement. I mean, just by pleading guilty to
19 one count, she was spared the grouping unit enhancements that Mr.
20 Dever received.

21 And the factual basis that supports this crime also
22 supports the crime of conspiracy to commit kidnapping. There were
23 many, many, many overt acts in furtherance of the conspiracy to
24 commit kidnapping. And her Guideline range, if she had just pled
25 guilty straight up and was convicted of kidnapping, would be 210 to

1 262 months. So we're asking for a tenth of that, partially because
2 we have considered those aggravating -- those mitigating factors.

3 She definitely is remorseful, I would certainly concede
4 that, and she was cooperative with the Government. And we have
5 rewarded that. But we have been very reasonable with her and she's
6 received substantial benefits from her plea. But we've already
7 discounted for those mitigating factors and we'd ask the Court not
8 to discount further.

9 With respect to the -- very briefly, with respect to
10 defense argument that the obstruction of justice was *de minimis*. I
11 would simply ask the Court when considering that argument, to look
12 at that from the perspective of law enforcement.

13 The law enforcement officers in this case, any time
14 they're dealing with a sovereign citizen case, they take great care
15 for their safety. There have been numerous counts -- accounts of
16 law enforcement officers getting into shoot-outs with sovereign
17 citizens due to their beliefs that they have no jurisdiction over
18 them and some that -- literally having religious zeal about their
19 beliefs.

20 And so when Ms. -- yes, it's true that the effect on the
21 Court was minimal. Ms. Moody missed her arraignment and then she
22 was arrested and then she had her arraignment fairly quickly
23 thereafter. But as I detailed in the response to the objection, the
24 Government had to respond with many, many agents to make sure that
25 that was a safe re-arrest. And remember, this is to the same house

1 that had all those things posted around the house about how the
2 Government doesn't have authority over them and that they will be
3 sued if they try to exercise jurisdiction over their home, and
4 things of that nature. So I'd ask the Court to consider that when
5 considering whether it was indeed *de minimis*.

6 Finally, your Honor, I just want to address -- I've
7 addressed the 3553(a) factors in my memo, I don't want to repeat
8 that. But I do want to emphasize one point and that is that this
9 case perhaps -- perhaps more than any that I can recall -- has a
10 uniquely high need for general deterrence.

11 I think when we sentence, we typically focus on the
12 specific deterrence. Is this defen -- are we going to make an
13 impression on this defendant such that this defendant won't be back
14 in this room again and I think the answer to that question is
15 probably no.

16 Again, it's hard to know if people with deep-seated,
17 sovereign citizen-type ideologies, what they're thinking about the
18 court and what they're going to do next, but I would certainly
19 concede I don't have evidence to the contrary that she won't be back
20 again.

21 But the need for general deterrence is why. The need for
22 general deterrence in most cases is simply we need to show people,
23 don't commit crimes because there's consequences, right. Sort of in
24 the general sense of general deterrence.

25 Here we have a very specific sense of general deterrence

1 in that 900 people have been served by this organization in 32
2 states so there's a lot of Ms. Moodys out there. So the Court's
3 judgment needs to tell those people, knock it off, no more, and
4 certainly don't execute any of these writs and kidnap people because
5 there will be severe consequences. And I fear that a time served
6 sentence won't do that.

7 So, your Honor, I ask the Court to consider where she
8 could have been, where her conduct has earned her. This is a
9 very -- the Guideline range is a very light sentence for her
10 already. And we've given her the ability -- the Government has
11 given her the ability to have a very light -- low sentencing
12 Guideline range because of the way we structured the plea agreement.

13 And so I'd ask the Court to consider, in particular, the
14 need for general deterrence and give her a sentence that's within
15 the Guideline range.

16 Thank you.

17 THE COURT: Okay. Thank you.

18 Ms. Moody, at this time you have the opportunity to
19 address the Court and to tell me anything that you feel I should
20 know before I make my decision regarding your sentence.

21 DEFENDANT MOODY: Dear Judge Reidinger, I sincerely
22 apologize to this Court, the victims and my family for the pain and
23 heartache I've caused. I ask for forgiveness from each of you. I
24 also have asked God for forgiveness.

25 My actions were so against my usual nature and character

1 as I have always strived to bring comfort to others, primarily
2 through music. I have a sincere love for my fellow men and women as
3 God instructs us to love our neighbors as you would yourself. I
4 promise this will never happen again and you won't see me involved
5 in anything like this in the future.

6 This has been a very hard, actually, the hardest lesson,
7 I've ever had to learn. I still am shocked that I ever listened to
8 such deception and misinformation. The jail experience has been
9 traumatizing for me and being away from my dear family has been like
10 a dagger through my heart. I've missed my dear husband, mother,
11 daughter, granddaughter so much and I know they miss me as well.

12 I have goals to get back to my music, caring for my
13 family and working, as I see a new beginning that I'm eager to get
14 started.

15 I'll never take anything for granted as I now can see I
16 have been very blessed. I have found more about who I am over the
17 past 10 months than I ever have known before.

18 I beg for another opportunity. To put my time and
19 talents into the community in a good way. Please have mercy and
20 allow me the chance to prove myself.

21 Thank you so much.

22 THE COURT: Okay. Thank you, Ms. Moody.

23 Mr. Anderson, you were mentioning earlier that at this
24 stage of the proceedings, that you may wish to have a discussion
25 with your client.

1 MR. ANDERSON: Yes, your Honor, that would be helpful.

2 THE COURT: Is this something that you would want to have
3 a discussion back in the holding area?

4 MR. ANDERSON: Yes, Judge. That would be fine.

5 THE COURT: Well, what we're going to do -- because we've
6 been at this now for two hours. So what we're going to do, we're
7 going to go ahead and take a 15-minute break and I guess both
8 defendants will be taken back to the lock-up, but that'll give you
9 the opportunity to go back there and talk to your client and we will
10 resume in approximately 15 minutes. Will that be an adequate period
11 of time for you?

12 MR. ANDERSON: Yes, your Honor, I believe it will. Thank
13 you for your courtesy.

14 THE COURT: Marshal, 15 minutes, please.

15 (Recess commencing at 3:59 p.m.)

16 (The defendant, Darris Gibson Moody, escorted out of the courtroom
17 at 3:59 p.m. and returned to the courtroom at 4:12 p.m.)

18 (The defendant, Timothy Michael Dever, escorted out of the courtroom
19 at 3:59 p.m. and returned to the courtroom at 4:12 p.m.)

20 (Recess concluding at 4:15 p.m.)

21 (Open Court at 4:15 p.m.)

22 THE COURT: Mr. Anderson, I'll give you the opportunity
23 at this time to address the question of the appropriate sentence for
24 Mr. Dever.

25 MR. ANDERSON: Thank you, your Honor.

1 THE COURT: I've read your memorandum, but I'll give you
2 the opportunity in supplement to that.

3 MR. ANDERSON: Thank you, your Honor.

4 As I indicated in the memorandum, I would request a
5 variance in this case. As I mentioned earlier, the Guidelines -- I
6 think we all agree that this Guideline doesn't fit this case sort of
7 -- it's not the typical case the Sentencing Commission had in mind.
8 And certainly as we start stacking enhancements, one on top of
9 another, we get to what, to my mind, is an excessively high sentence
10 under 3553(a).

11 We do recognize that our sentence here is going to be
12 tied to Ms. Moody's sentence and so I don't know exactly what your
13 Honor is going to impose there, but we would ask for a sentence, you
14 know, at her level or around her level -- perhaps slightly above --
15 because we do recognize that there are some aggravating factors over
16 here, but also some mitigating factors that are not present over
17 there.

18 I do want to say to all the victims here that this is a
19 sad day for everybody. You know, I certainly fully agree that no
20 one in this country deserves to be frightened or afraid and I can
21 empathize with that.

22 I mean, three years ago, I was the victim, with my son,
23 of a carjacking at a McDonald's and so I get what it's like to be
24 afraid.

25 And then when the defendant skipped out on bond and have

1 to worry about the rustle in the bushes. Like, well, is this the
2 guy that held me up at gunpoint? I get that, right.

3 But I also agree with what Judge Forga said that the
4 tools that we have in the law are exceptionally imperfect and so
5 what we do here today -- and just like when the defendant in my case
6 was sentenced, to five years. Nothing that was done in that
7 courtroom in any way, shape or form could undo the fear that I felt,
8 could undo the fear that I will fear in the future not only for me,
9 but for my son so I get that.

10 But, again, our tools here are prison, home
11 incarceration, supervised release. That's kind of all that we got
12 and it's a very imperfect system.

13 So I certainly empathize with the victims. I mean, have
14 been there myself. I have written victim impact statements. And I
15 certainly understand that although any sort of -- I don't want to
16 use the word -- I guess most people reading these writs would view
17 them as completely nonsensical, and I get that, but I also get that
18 there are people who do nonsensical things. And sometimes something
19 that's written in crayon might be scarier than something that's
20 typed out on sort of legalese and so I get that.

21 So I'm not trying to minimize at all the harm that the
22 victims have suffered, but I don't know, again, that a sentence of
23 what Mr. Gast is going to ask for, 180 months or so, is at all
24 proportional to that harm.

25 Because, again, although a lot of bad things could have

1 happened, a lot worse things could have happened, I think it is
2 important to not lose sight of the fact that those other things that
3 could have happened have not happened.

4 And I think that we don't want to -- obviously we have to
5 account for that risk, but I think there is a marked difference
6 between the actual accomplishments of those threats and the mere
7 uttering of the words or the mere giving of the documents to
8 someone.

9 And as I note in the -- in my memo with respect to the
10 Guidelines, in some sense, an actual completed assault would result
11 in a higher Guideline than just these mere threats here, which is --
12 again, it's because of the very unusual way that this fact pattern
13 fits into the Guidelines.

14 But, again, I just want to focus on, yes, it was bad what
15 happened. Yes, he said a lot of things he certainly should not have
16 said -- a lot of things that he, I hope, understands that he should
17 not say in the future -- that could have led to a much worse result,
18 but it didn't. And I don't want to lose sight of that fact today.

19 So it's certainly sad for the victims here, I get that.
20 It's also, of course, sad for Mr. Dever's family. You have read the
21 many letters of support that I have submitted and also Dr. Cantley's
22 report that summarizes some conversations with the family that they
23 really felt like that they lost Mr. Dever. When COVID happened, it
24 was a crazy time for everybody. And, you know, to fall into a
25 rabbit hole of sort of social media, where social media companies --

1 the way that they get you hooked on it is to keep feeding you more
2 and more outrageous content. And, again, Congress has said they can
3 do it. You know, I'm not in Congress so I can't really speak to
4 that. Doesn't seem like a good idea to me. But, you know, being
5 locked down, having your business shut down, it was just a crazy
6 time for everybody.

7 And I'm sure all of us here in the courtroom sort of
8 remember how it impacted us as -- in our lives. And, again, it
9 just -- it caused Mr. Dever's family to lose the person that they
10 knew before. So I think you saw from his wife's letter in
11 particular that she really wants the Tim that she knew five years
12 ago to come home because that's the -- you know, that was just such
13 a different person. Yes, always a little odd. Yes, sort of prone
14 to conspiracy theories.

15 But the COVID time and thereafter through this offense
16 has been hard on the family. It's been, of course, very hard on
17 their marriage. It's been hard on them financially.

18 All that's, again, not to minimize what the victims have
19 gone through. Because, again, he didn't have to suffer the fear
20 that the victims had to suffer through. But it's been hard on the
21 family. It's been hard on him, too.

22 Again, he's not been through the criminal justice system
23 before. He's a true zero, as we say. And, of course, the
24 Sentencing Commission in a few months -- assuming Congress doesn't
25 get involved -- is going to give us a reduction for true zeros.

1 So he's never been to the jail. And you saw earlier
2 today that he was very confused about sort of the procedure here.
3 This is his very first sentencing. Most of the folks that sit over
4 here beside me have gone through the state system, you know, several
5 times, maybe the federal court a couple times so it's not their
6 first rodeo so they understand how this process works. All of this
7 has been completely foreign to him and so that's been hard.

8 As I note, because of his unorthodox beliefs, it's been
9 hard on him in the jail and some interpersonal conflict there in the
10 jail that has been unfortunate. But, again, as Ms. Jones noted, you
11 know, in the county jail, you know, you don't get to sort of pick
12 and choose who's there. And so whether it's murder or for drug
13 possession, you all go in the same box together. But it's
14 definitely been hard on an interpersonal level at the jail for
15 someone like Mr. Dever who has these unorthodox beliefs that are
16 very, very difficult for him to let go of.

17 It has been obviously an embarrassment to him that he,
18 who has been a devout Christian for many, many years and who does
19 and should understand the Golden Rule, that he didn't abide by that.
20 You know, that's something that he understands that he has to accept
21 responsibility for, both sort of for the judgment of this Court and
22 perhaps from higher powers that also have to pass judgment on all
23 these things so he gets that.

24 And I know that, you know, over the course of the many,
25 many hours that we have spent together -- and when I submit my

1 voucher, you'll see that I have spent many, many hours with Mr.
2 Dever -- we certainly have gone through ups and downs.

3 When I first met him, I was very concerned that -- so
4 much so that I had to get Dr. Cantley to just make sure that I could
5 proceed in the case. And it's my first time doing that in almost 12
6 years on the panel. That he was sort of -- these beliefs that
7 seemed so, you know, untethered to reality, that were so hard to let
8 go of.

9 But, again, over the course of many, many months he's
10 come a long, long way. So we stopped talking about, you know,
11 Agents of the Crown and, you know, sort of all the things that the
12 King of England might or might not have to do with the establishment
13 of the bar in this country. Things that really had no bearing about
14 anything, but, again, were a testament to how far he had fallen down
15 into this hole -- and that's the best way that I can describe it --
16 and he's, you know, having to claw his way out of that hole and it's
17 been an imperfect climb.

18 Certainly as Mr. Gast noted in his memo, and as I
19 responded, you know, we're not all the way there yet, but I will
20 say, having spent many hours with him, we are a whole lot better now
21 than where we were several months ago.

22 I would say as well the -- talking about Dr. Cantley's
23 report in particular, I take quite a high degree of comfort that she
24 thinks that he will be able to abide by provisions of supervised
25 release and -- including the provision of getting mental health

1 counseling. That she thinks that he'll be able to do it. She also
2 thinks that he is a low risk of violence and I think that's a
3 positive sign.

4 So I know that your Honor has to consider sort of the
5 entire panoply of tools available to you as to how to protect the
6 public and how to help him get the help that he needs. And it's
7 clear that, you know, he needs to figure out a way to be able to
8 talk with somebody to say, well, yeah, I know I might have heard
9 that on YouTube, but, you know, what's the real -- what's the real
10 deal and somehow to separate some of that fact from fiction. That
11 it's very easy to get lost in the -- online because of the way that
12 the social media companies work.

13 I know that we heard from Mr. Gast a while ago about sort
14 of general deterrence as a factor, but, your Honor, for this case
15 and the people who were involved in the PBI, this is not a case of
16 cold calculation of risks and benefits. I mean, these are people
17 who have, you know, difficulty inhabiting the same world that you
18 and I do and making the decisions that you and I do. Imposing a
19 harsh sentence, I think, will mean absolutely nothing to people in
20 this community, right and so I just don't know that that's really a
21 big factor here.

22 I mean, obviously there are other people who might want
23 to make more traditional types of threats, like stalking or
24 otherwise that we have to keep in mind about, but to think that
25 people who believe that an environmental district court can

1 summarily convict someone in absentia and that somehow we are going
2 to factor in the judgment of what this very real court does, I don't
3 think that that holds up for -- at least based on the chats that
4 I've seen off of Telegram, I don't know that those folks are going
5 to make that sort of economic type, rational-man calculus in the
6 same way that drug dealers do certainly, right, where you have
7 profits to be made from an -- from an activity.

8 This was not a money-making scheme. He wasn't trying to
9 extort people for money. He was very misguided, but sincere, I
10 believe, in believing that -- you know, that the water was bad. And
11 we all agree that we should have good water and, you know, I would
12 say that, you know, he could and should have, you know, organized
13 voter drives and other things, the way that our system works to
14 achieve that goal. But I think it is relevant that he was concerned
15 about sort of cancer causing for other citizens.

16 And so, yes, we have scared some citizens, but he was
17 concerned about harm to other citizens. And, again, it's not a
18 defense under the law. Certainly not. He was not insane so he
19 is -- you know, the law says that he can separate the wheat from the
20 chaff, at least enough to clear the bar for insanity.

21 But I think it's relevant that he wasn't trying to stalk
22 an ex-girlfriend to terrorize somebody because she left him. He
23 wasn't shaking down people for money.

24 Again, it was sort of laudable goals perhaps --
25 definitely wrong means -- but I think that as you consider those

1 3553(a) factors, I think that's certainly relevant.

2 And I don't know that specific deterrence is a lot that
3 really sort of applies here, right. So if someone has a hard time
4 separating fact from fiction and making cold, rational calculations,
5 you know, this specific deterrence is not a real factor. I think
6 what is the more relevant factor, beyond specific deterrence, is
7 incapacitation, right.

8 So to the extent that the Court decides, well, you know,
9 until the Bureau of Prisons can give him enough sort of counseling,
10 like, that, to me is, is what's really driving sort of those
11 considerations about deterrence. It's more incapacitation than
12 deterrence.

13 Judge, you know, I've spent a lot of time with Mr. Dever.
14 He's always -- certainly we have had our disagreements in part. You
15 know, if I use the wrong word, we get hung up on my word choice for
16 20 or 30 minutes, but even through all that and even through, you
17 know, my sometimes frustration in trying to have conversations with
18 him, he's always been respectful to me and I certainly applaud him
19 for that. And, again, having that insight and being able to apply
20 that to other people is certainly a positive -- a positive factor
21 for him.

22 I think it's also a positive factor that not only did he
23 plead guilty, right -- required him to take an oath, you know,
24 before his God to tell the truth and to accept responsibility. That
25 was obviously hard.

1 But I think it's also relevant that he, despite even a
2 slight hiccup this morning, that he has kept with an attorney. For
3 the first part of this case, he was *pro se* because he couldn't even
4 believe that there were attorneys who were sort of lawfully in
5 place. But we have gotten past that, we have stayed with an
6 attorney and, again, that's to his benefit I think.

7 I think it's also, you know, relevant that it's not like
8 that the -- you know, that he was sitting around with Ms. Moody
9 calculating sort of who the particular people were going to be. Was
10 it going to be one, two, three or a hundred?

11 Obviously he's responsible for what Ms. Moody did. He's
12 also responsible for what other people did who saw his channel.
13 Sort of get that under the law. But I think it's relevant that he
14 didn't pick out any of these victims to say, I want you to go and
15 target this particular victim because of a particular animus that I
16 have against this person.

17 Again, it was sort of wrong, but it's not the calculated
18 threat like we see in a more typical case involving the Guidelines.

19 I would also note that, you know, he didn't come to this
20 all by himself. He came to it in part through co-defendant --
21 through a co-defendant, who has gone on to meet his maker and to
22 sort of receive his higher justice.

23 And so if all three of us were sitting here at the table,
24 again, I would say that, you know, whatever the sentence that you
25 would impose upon, you know, the absent co-defendant would be higher

1 to some degree than Mr. Dever's and so he's, you know, somewhat in
2 the middle of the three.

3 Because, again, it's sort of Tom Murphy who comes up with
4 the reclaimator and talks about these writs. And, again, Mr. Dever
5 is a very gullible individual. You've seen that from Dr. Cantley's
6 report. And, yes, he was competent under the law to merit
7 punishment because he did not separate fact from fiction or at least
8 to not be sort of willfully blind perhaps to some of the stuff. But
9 I think it's relevant that some of this came from someone who is not
10 here for you to order the sentences in that way.

11 I would also note that under his plea agreement he was
12 willing to cooperate and testify against Mr. Murphy. Now, again,
13 because cancer sort of claimed Mr. Murphy, Mr. Dever didn't have
14 that opportunity but, you know, that's -- it's a testament that
15 under his plea that he has agreed to cooperate here and in any
16 future prosecutions. And, again, that's a testament to, you know,
17 that this was obviously very difficult to plead guilty. No one
18 wants to, you know, have to tell your wife, you know, honey, I'm a
19 felon. No one with children wants to -- you know, to have your
20 children know that you're a felon.

21 So he's done the hard thing so he knows he has to accept
22 responsibility. He knows this Court is a very real court that's
23 going to impose a very real sentence. But, your Honor, I would just
24 ask for a significant variance in this case.

25 I mean, again, these Guidelines are just sort of

1 incredible as we look at sort of what actually happened here. And
2 as we look at the one sort of prior threats case that I found from
3 Connecticut where you saw that the individual had done it on
4 previous occasions, right. And then even after that case where I
5 cited there, I found him because he recently has pleaded guilty to
6 doing it yet again, right.

7 And so it was sort of a history of these wild beliefs and
8 the Government was, you know, willing to countenance a very low
9 sentence in that case. So I would say there were probably some
10 similarities between that case and this case.

11 And, again, Mr. Dever knows that he has to receive a
12 judgment, but I think that the Government's position, and even the
13 Guidelines position, are just far too harsh.

14 Thank you, Judge.

15 THE COURT: All right. Thank you.

16 Mr. Gast, what's the position of the Government?

17 MR. GAST: Thank you, your Honor.

18 As we note in our brief, we're asking the Court to impose
19 a sentence of 180 months. That is a modest upward variance or
20 departure above the current applicable Guideline range.

21 And if I could say, when I say departure or variance, I
22 want to be clear -- and I think I was clear in the memorandum that I
23 filed with the Court -- that the Court can do this as a departure
24 with the tools given to it in the Guidelines manual. So I may lapse
25 and say departure or variance, but really the Court can do it either

1 way given the tools in the Guidelines.

2 I'm not going to repeat my argument from before about how
3 serious these threats were. They were serious for the reasons I set
4 forth in the memorandum and that I argued before. Uniquely so.
5 Much different than the typical 875(c) case. And I think in that
6 respect, I think the Court should be inclined to vary upward.

7 But in this case, unlike Ms. Moody, Mr. Dever was the
8 master mind, the recruiter, the creator and the promoter of this
9 scheme.

10 Defense counsel said he just fell down a rabbit hole
11 during COVID. He dug the rabbit hole. So that -- you know, saying
12 that he just fell into this is -- just simply does not square with
13 the facts in this case.

14 This defendant was the one that was recruiting people.
15 He was claiming he was going to hire people to be his agents. He
16 was the one that was instructing people. He was the one having the
17 live instruction.

18 And the damage lingers. The PBI website itself is down
19 because it costs money to host it and so while he was in custody, it
20 eventually got taken down, but the videos still remain on YouTube or
21 on other platforms. The Facebook page for the PBI is still up. I
22 don't have access to it, it's a private group, but I know that -- it
23 does say how many members and when it was last posted. There is
24 approximately 1,500 members currently of the FaceBook page for the
25 PBI and there were at least three posts today. I wasn't able to see

1 them, but the damage continues even with its leader in custody.

2 And unlike Ms. Moody, Mr. Dever spoke both publicly and
3 privately about violence and murder against public officials. I
4 endeavored to make that clear in the memo, but there was the
5 references to the tarps. There was the references to him stating, I
6 would like to provide the gun to the trigger man.

7 There were more -- and I quoted them extensively in the
8 brief, I won't restate them here -- but there were many references
9 to inflicting violence upon public officials unlike Ms. Moody.

10 Further, this defendant has demonstrated that he is not
11 remorseful for his conduct, which is another big differentiator
12 between himself and his co-defendant. The threats continued while
13 he was incarcerated.

14 I would note for the Court's attention -- I'm sure the
15 Court read the letters in support of the defendant that were
16 attached to the defendant's pros memo -- sentencing memo, excuse me,
17 and several of them suggested that he now knows what he did was
18 wrong or that he was sorry and perhaps that he was even reformed.
19 And I would say to that, that's just simply not true.

20 The conduct, even post-arrest and post-plea, threatening
21 to have members of the people involved in the prosecution and
22 conviction in this case sent to FEMA camps where they would be
23 burned to death or killed by electric guillotines.

24 He -- and the Court's been provided with those -- with
25 those jail calls. And remember, to be clear, we found out about

1 this from the cooperator first. The cooperator was so alarmed about
2 it that the cooperator went to the attorney -- to his attorney and
3 the attorney alerted us so we interviewed the cooperator. And it
4 was only after going back to the jail calls at that point we found
5 those jail calls that showed that the cooperator was exactly right,
6 that he was saying those things at the jail. That certainly is not
7 indicative of remorse.

8 He continued to tell his fellow inmates that he was going
9 to be liberated by the military and white hat marshals and that
10 everyone that was persecuting him was going to be brought to their
11 justice.

12 As recently as last Friday, he was on jail calls
13 discussing assertions that this Court had no jurisdiction over him
14 and that he should make that argument. He may yet argue that when
15 he gets his chance to address the Court.

16 So the fact that -- the statement that he's come a long
17 way, I would suggest there's just simply no evidence of that.

18 With respect to his psych evaluation, I read that at some
19 length. And, again, like Ms. Moody's, his psych evaluation is also
20 unremarkable. He is not subject to any mental health diseases. The
21 best that the doctor could identify was that he has grandiosity and
22 extremely overvalued beliefs, which frankly gives me little comfort
23 that the Court's direct deterrence will have much effect on him.

24 But there's also evidence in that report that he wasn't
25 being entirely honest with Dr. Cantley. For example, he claimed

1 that he was separating from the PBI for the six months that preceded
2 his arrest. We know that's not true because of all the things he
3 did. He made new videos, he posted all the things on Telegram in
4 support of Ms. Moody and in trying, at least imperfectly, to
5 obstruct justice in her case.

6 Dr. Cantley's report seems to indicate that Mr. Dever's
7 primary concern was the water -- and I'm not suggesting that he was
8 entirely unconcerned about the water -- but when the Court looks at
9 his website and the things I provided in the memorandum, it is clear
10 that that was just one of many in a pastel [sic] of concerns that
11 were anti-government and so his concern was removing government.

12 Was he concerned about water? I'm sure he was. Just
13 like he was concerned about 5G and GMOs and the vaccine and and and
14 that were in the writ.

15 He also -- and Dr. Cantley's report seemed to indicate
16 that the defendant succumbed to the influence of others, which again
17 is not borne out by the facts. He is the one that propagated these
18 things. He was the instigator. He is the one that dug the rabbit
19 hole, he did not fall in it.

20 I want to address for just a minute some of the
21 sentencing comparisons that were made in the defense sentencing
22 memorandum. There were two general categories. One was just sort
23 of white board exercises comparing them to what other people would
24 get for other crimes. I would submit that those are of zero value.
25 Those hypotheticals -- they're on page 14 of the sentencing

1 memorandum -- purport to, you know, white board some scenarios of,
2 what if somebody did this crime, what would they get.

3 What those hypotheticals ignore are the ten levels the
4 defendant got for being a leader organizer and for the -- targeting
5 official victims. And it also ignores the four levels for the
6 grouping unit increases.

7 So, for example, his first white board thing here was
8 talking about shooting someone with a firearm and causing permanent
9 or life-threatening injury with a hate crime advancement and no plea
10 and he suggests that would yield a sentence of only 70 to 87 months
11 and so, therefore, this range is ridiculous.

12 Well, number one, he calculated the range right, it
13 actually should -- wrong. It should actually be 29, not 27. So the
14 actual Guideline range for those facts would be 87 to 108. But when
15 you add ten levels for, if he shot an official victim and if he did
16 so as a leader and organizer of others, then his Guideline range
17 would jump up to 262 to 327 months.

18 And if you add to that again, the grouping units, if he
19 shot five people, which is what he's pleading guilty to here is
20 harming five people directly and then 900 and some indirectly
21 through relevant conduct, that would bump it up to a life sentence.

22 So those white board exercises in the brief, I would ask
23 the Court to totally disregard those. That's just smoke and mirrors
24 and has no bearing on the fitness of the Guideline range in this
25 case.

1 The other comparator that defense counsel used in the
2 brief -- and I want to address this for a minute -- is comparing him
3 to other January 6th defendants. And I will say that this
4 comparison is not entirely inept -- inapt -- I apologize for the
5 double negative.

6 I certainly recognize that there are some similarities to
7 that incident and those cases to this case. They were driven
8 primarily by conspiracy theories. It was an attack on American
9 democracy and due process like this case was. The violence was
10 directed towards public officials, which is the case here. In fact,
11 it was no surprise to me that the defendant was there and trying to
12 profit off of his presence there by selling an NFT of a photograph
13 he took while he was there.

14 But there are many substantial differences to the
15 sentences that others have received in that case that are -- make it
16 difficult to have a direct comparator to the January 6th cases.

17 One, is the January 6th incident involved thousands of
18 people, many of whom were there to attend a protest and got caught
19 up in a mob and it was a single event. So for those that got caught
20 up in the mob, they would have a reasonable mitigating argument that
21 this was a momentary lapse of judgment. You know, that we thought
22 we were going for one thing and it became something else and we
23 participated.

24 Again, I can't possibly excuse that behavior. But
25 compare and contrast that to Mr. Dever's conduct where he spent the

1 better part of a year master minding this scheme, promoting the
2 scheme, educating and recruiting people for the scheme. So it's
3 certainly not a single event and it was not a momentary lapse of
4 reason.

5 For most of the people who have been punished, or at
6 least many of the people that have been punished -- and I'm
7 certainly no scholar in what's been going on in the D.C. court for
8 the January 6 defendants -- but for many who have been punished, it
9 involves sort of variations of trespassing and vandalism and assault
10 on law enforcement officers. All those things are very bad, but
11 these are not the sorts of things that tend to carry high sentences.
12 And so for many of the folks there, that that would be a poor
13 comparator. This defendant, however, was a leader, organizer,
14 planner and promoter and he targeted the victims directly.

15 So what I would say to that argument is it's difficult to
16 compare this defendant to those January 6th defendants cited in the
17 defendant's memo in part because I don't know much about those cases
18 and I don't know if the Court knows more.

19 But, for example, he cites Stewart Rhodes, who received
20 an 18-year sentence. He was the leader of the Oath Keepers. I
21 don't know much about the case, but I do know his Guideline range
22 was actually substantially higher than that. It was four years
23 higher than that. The Government was asking for a 25-year sentence
24 as I recall. In fact, the Department of Justice has made the rare
25 move of appealing the sentence on the basis of the reasonableness --

1 the substantive reasonableness of it. So I don't know how to well
2 compare that to this defendant.

3 But I would also -- Mr. Meggs' sentence, the 12-year
4 sentence, was also cited in the defense brief was also appealed for
5 similar reasons.

6 I will tell the Court though that there's a pending
7 sentence for the Proud Boys leader that was convicted at trial,
8 Enrique Tarrio and Joe Biggs, and the Government is seeking 33-year
9 sentences in that case. So this case, obviously we're seeking a
10 substantially lighter sentence than those.

11 So I guess what I would say with respect to that
12 comparison, that I think the best the Court can do, I think that it
13 is right for the Court to compare this defendant to other leader
14 organizers or promoters. I don't think it would be appropriate to
15 compare him to low-level participants that were not leaders
16 promoters, because that's not what Mr. Dever was in this case, but
17 the January 6 leaders that got substantially higher sentences than
18 what we are requesting.

19 The defendant's current Guideline range is 108 to
20 135 months and we are seeking a modest upward departure or variance
21 of three levels to 180 months.

22 And, again, as I said before, the Court can do that
23 entirely with the Guidelines. The Court can do it because the
24 number of victims is substantially understated in this case. The
25 Guidelines call for the possibility of an upward departure when the

1 number -- because the Guideline enhancement that applies to this
2 defendant is just two for targeting 900 people in 32 states. It
3 would be the same as targeting just a few people here locally.

4 So when defense counsel says that this Guideline range
5 substantially overstates his culpability, I have to snicker. I
6 mean, the Guideline range is -- just completely fails to -- to
7 account for the damage he caused by a factor of several hundred.

8 Another enhancement that I -- or another way to use the
9 Guidelines to effect this enhancement, and I did not think of this
10 prior to filing the sentencing memorandum, it would be using 3A1.4,
11 which is the terrorism enhancement.

12 Now, to be clear, the terrorism enhancement does not
13 apply in this case under the Guidelines because the terrorism
14 enhancement is a 12-level enhancement and only applies when the
15 defendant is convicted of certain enumerated offenses and he was not
16 convicted of one of those. So, again, I want to be clear. I'm not
17 saying he should get a 12-level enhancement.

18 But the Application Note 4 under 3A1.4 says that there
19 may be cases in which the offense was calculated to influence or
20 affect the conduct of government by intimidation or coercion or to
21 retaliate against a government conduct, but the offense involved or
22 was intended to promote an offense other than the enumerated
23 offenses.

24 And that is exactly what we have here. This defendant
25 was far more anti-government than he was pro-water. And the purpose

1 of this whole exercise, this whole scheme perpetrated across the
2 country, was to remove public officials at all levels of government
3 and that's exactly what this application note calls for.

4 So, again -- and I apologize I didn't find this until
5 after I filed the sentencing memorandum, but this is a within
6 Guidelines way to reach the sentence that the Government is
7 requesting. As is the number of victim enhancement.

8 Then there's also the variance arguments that are in the
9 sentencing memo. That this crime is un-American and anti-democratic
10 by its very nature and these crimes -- these threats were far worse
11 than the typical.

12 So given that, there's multiple ways the Court can get
13 there, but I would submit that a three-level upward variance is
14 modest and appropriate in this case, especially when the Court
15 considers -- again, similar to Ms. Moody -- what he could be facing
16 in this case.

17 He -- by pleading by virtue of the plea agreement, he is
18 only getting four levels for the grouping unit, he could get five --
19 it caps at five -- but if he got one more he'd be in a range of 121
20 to 151 right there if we'd just made him eat one more count.

21 And, of course, then there's the conspiracy to commit
22 kidnapping charge, which, again as with the previous defendant, the
23 facts that are in the factual basis currently before the Court would
24 support that conviction. And had he been convicted of that crime or
25 pleaded guilty to that crime -- well, if he'd pleaded guilty to that

1 crime, his Guideline range would be 262 to 327. We are asking for a
2 sentence substantially lower than that because at its heart, that's
3 what this crime was. It was threats, to be sure, but it was also
4 conspiracy to have people kidnapped. That's why the threats were so
5 scary.

6 Lastly, I want to talk about the -- again, I don't want
7 to repeat my arguments on the 3553(a) factors, but I do want to talk
8 about deterrence. I guess I agree with defense counsel that people
9 that so fervently hold on to the beliefs that Mr. Dever holds on to,
10 they are difficult to deter. And in that case, I think we have --
11 unlike Ms. Moody, we have evidence to the contrary that Mr. Dever
12 has been undeterred and has not learned the error of his ways and
13 vacated the rabbit hole that he dug.

14 So I think specific deterrence is very much necessary for
15 him because he has -- again, even as recently as last week he was
16 talking with people about, you know, how this Court has no actual
17 jurisdiction over him and that argument needs to be asserted.

18 But, again, I would say that the need for general
19 deterrence is uniquely high in this case, as it is for Ms. Moody,
20 but also -- especially so for Mr. Dever. If he is allowed to have a
21 below-Guideline sentence or a light sentence, certainly one as light
22 as the one that defense counsel is suggesting, that would send a
23 message to all these people that believe these things, that it's
24 worth taking the risk because the consequences are not that severe.

25 The consequences of this -- and, again, I can't speak any

1 more eloquently than the victims did -- this was just four of the
2 victims. This defendant's responsible for 900 people. Perhaps they
3 don't all feel as strongly as these, but this is a sample of how
4 many people were affected by the rabbit hole that he dug.

5 So the need for general deterrence we need -- in addition
6 to keeping him from doing it again, we need to send the rest of the
7 organization that still exists, that still has access to his videos
8 and still has a FaceBook page, that the consequences will be severe
9 for targeting people who decided to raise their hand and serve in
10 public service.

11 It's this kind of thing that deters good people from
12 running for office, from taking positions like the Court has or that
13 I have. It's this kind of stuff that deters people. And that's a
14 threat to our system of government, it's a threat to our society and
15 it's anti-democratic and un-American.

16 So we think an 180-month sentence is not greater than
17 necessary and a modest increase and I ask the Court to embrace it.

18 Thank you.

19 THE COURT: Thank you.

20 Mr. Dever, at this time you have the opportunity to
21 address the Court and to tell me anything that you feel I should
22 know before I make my decision regarding your sentence.

23 DEFENDANT DEVER: Yes, your Honor.

24 First I'd like to place my right hand on the Bible here
25 (indicating) and swear under God on this Bible and my children's

1 graves that at least 70 percent of the things that Mr. Gast has
2 claimed are completely patently false and made up.

3 This is very disturbing -- I'm very disturbed about some
4 of the statements that have been made today regarding -- for
5 example, he stated that last week I said that this Court had no
6 jurisdiction in a phone call. That conversation did not happen.

7 There's been discussion that I've stated things while I
8 was in custody to an informant that said I would burn people and
9 this is completely false and not -- it doesn't exist. I don't even
10 know where people come up with this kind of thought. It's not
11 something I would say, never mind, speak. And I'm very disturbed
12 that -- that that's been said about me.

13 These are things that I've heard in coming down to North
14 Carolina. Some very disturbing inmates say some very disturbing
15 things about things that go on in the woods and so on and so forth
16 here that are upsetting, but these are not things that I would do.

17 I'm actually in a state of shock right now because of so
18 many things that were stated were beyond my scope of imagination. I
19 admit that I did some things wrong. I'm just -- I'm not
20 understanding how people can make statements that aren't accurate.
21 He's stating things that other people say and then claiming that I
22 spoke them.

23 There's a gentleman named Jim that called me on the
24 telephone that was storing my boat, a fishing boat -- an old fishing
25 boat -- on his property and he made statements about electric

1 guillotines and so forth and I was immediately shocked when he said
2 that.

3 He said that -- and I -- and I tried to tell the
4 prosecutors, both of them -- and I spoke to my attorney about
5 discussing details about this -- the PBI and how it was founded and
6 so forth and I wanted to discuss -- and as the -- my counsel advised
7 that he stated that -- I just can't believe what's being said about
8 me. It's just shocking. Okay.

9 So I offered to cooperate with -- six different times. I
10 even had my wife get a copy of a bill, a phone bill from Verizon
11 from four years ago pertaining to things regarding that I wanted to
12 cooperate with. I have two pages of notes here that I wanted to
13 discuss with the prosecutor and -- both prosecutors and the FBI
14 agent. I wasn't afforded that opportunity. I requested to
15 cooperate and I wasn't afforded the opportunity to cooperate.

16 And I was -- I had information -- when I sat down with
17 them in a meeting when I was *pro se*, I informed them that I was --
18 because of the Peoples Bureau of Investigation logo, somebody came
19 to me -- a woman said she was sex trafficked for -- as a child at
20 the highest level. I informed them of this and they just looked at
21 me with a blank stare in their face and didn't even want to
22 acknowledge it. I said, this woman is trafficked at the highest
23 level, and no one wanted to hear about it.

24 Do you -- do you recall this?

25 MR. ANDERSON: Mr. Dever, this is your opportunity to

1 talk to the Judge.

2 DEFENDANT DEVER: You were at the meeting.

3 THE COURT: This isn't the time for Mr. Anderson to speak
4 further. This is time for you to address the Court. Anything that
5 you feel I need to know before I make my decision regarding your
6 sentence.

7 DEFENDANT DEVER: Yeah. So -- yeah, there's -- well, I
8 have an apology letter here -- I'll go to that -- but I just am very
9 shocked that there's been a confidential informant that stated
10 things, I guess to bring my level up, that are just beyond, like I
11 said, my comprehension. Never stated those things.

12 And then the other thing that, I guess, increased my
13 level was some words that this gentleman, Jim, said on the telephone
14 that shocked me. And I have 'em in my notes from Transylvania that
15 I wanted to discuss that phone call. So the very thing that he's
16 holding against me, I wanted to actually discuss with him as an --
17 as an informant, cooperating. I mean, it's right here. The
18 electric guillotine indictments and Inter -- 500,000 military
19 indictments, Interpol, arresting properties for marshals and all
20 this -- all this nonsense that I don't want to hear any more from
21 anybody.

22 I'm done with this QAnon thing. I don't want any part of
23 it. And I try to tell these folks, but some people come to me --
24 because I created the Peoples Bureau of Investigation -- and they're
25 afraid of their own government so they came to me about things that

1 are quite disturbing. And I try to share 'em and then I turn into
2 some kind of villain. And it's really disturbing how this is -- how
3 this has transpired.

4 I mean, like I said, I'm shaking right now. I'm
5 trembling over it. Because I don't know how to handle it. It's
6 just overwhelming to have these things stated that are not true
7 about me.

8 So if I can just -- I guess I'll just read the apology
9 letter that I have prepared and then I guess it is what it is. But,
10 yeah, I wanted to -- I was told if I cooperated -- I thought the 41
11 to 51 months was extreme. The original plea deal that I accepted, I
12 thought that seemed extremely high. And then when these other
13 things occurred that were just added to it, it just keeps on piling
14 on.

15 I mean, just two days ago I found out it went from 108 to
16 135 to 180 based on probably a meth head -- I mean, everyone in
17 my -- in there needs help. They're on drugs or they're coming off
18 of drugs. I've had cellmates that are in really bad shape and I'm
19 not -- I'm being accused of something by people who aren't
20 reputable. I would never say these things that Mr. Gast has claimed
21 I've said. It's just preposterous.

22 So that's all I have to say regarding -- regarding the
23 enhancements and the Guideline enhancements. They're just --
24 they're not -- they're not founded in fact. They're -- there's --
25 he stated that I did some things, that I wasn't done with this for

1 six months. I started an organic mushroom business in Christian
2 ministry. And then when I found out poor Darris was incarcerated, I
3 thought at that time I was functioning under the First Amendment and
4 environmental court was real. I'm sorry for believing that, but I
5 thought it was a real thing.

6 So when she got incarcerated, of course, I was very upset
7 with that, but there was no -- there was a six-month period where I
8 was indeed not doing -- I was done with it because I didn't want to
9 hear anymore from people telling me things that are going on within
10 the government. I just didn't want to hear about it. I didn't want
11 to know anymore so I was done with it.

12 And then when she got arrested -- I lived in their home
13 for two weeks and slept on the recliner -- because I was, like, in
14 shock that she got arrested for trying to stop poison water. And
15 that's why I got pulled back into it and I didn't want any part of
16 it anymore. I was, like, well, I don't want to be involved in this
17 anymore, but I got pulled into it. Now I'm jail and I'm stuck in
18 it. All I wanted to do was just go about my life, but it didn't
19 work out.

20 So I'm just going to read this at this point because I
21 don't know what else to do, but -- and I apologize for earlier
22 because when I heard Mr. Gast claim -- and people claim that the
23 website had a list of everybody, doxxing them. It was a search
24 engine that was requested by the people who were serving the
25 documents. Because initially the documents had to be served

1 registered mail on legal sized paper per Mr. Moody's -- the
2 environment -- the founder of the environmental court and
3 environmental law and all his environmental marshals. He insisted
4 everything had to be on legal paper.

5 So when he -- when he did that and then it all changed, I
6 was, like, shocked that we had -- all of a sudden it was -- you
7 could fax the document. That was when I started to think things
8 weren't right, but I actually thought everything that he had created
9 was real. I thought this environmental court was a real thing. The
10 documents that were -- I read them, I researched some of the content
11 of the documents and -- and it was real.

12 And so I was forced to get back into it because I had --
13 I felt so concerned about Darris, Ms. Moody and Chuck -- I mean, I
14 fell in love with these people -- this man became my friend. For
15 two weeks, I slept on the recliner. And I was trying to figure out
16 how to get her out of the situation that I felt like, you know,
17 obviously directly caused.

18 So that's why I had to get back in, but I didn't -- the
19 website was just a search was what I was getting at. You would
20 search -- because people were having to pay \$48 to serve registered
21 mail. It wasn't something that was originally faxed. Tom insisted
22 it had to be faxed -- or registered mail initially so people were
23 spending \$48. So the concern was, well, we're going to double --
24 have to maybe might serve the same person twice. So everyone said,
25 well, how do we remedy that.

1 And then people had given advice and then they said,
2 well, let's track it so people can't do a double service because
3 it's expensive for people to spend money on this process, right.
4 Spending \$50 to serve it registered mail. So that's when -- that
5 process was going on. I'm still just beside myself on the things
6 that have been said about me.

7 So when the registered mail process was taking place, I
8 was -- I was just going through -- the website -- I can't believe
9 this. Oh, boy. Just give me a second to gather myself here.

10 (Attorney Anderson conferring with the defendant, Timothy Michael
11 Dever, at counsel table briefly off the record)

12 DEFENDANT DEVER: I appreciate you strongly encouraging
13 me to stop.

14 THE COURT: Take your time, sir.

15 DEFENDANT DEVER: So the documents were there on the web
16 site -- or you had to search is what I'm getting at. There was no
17 doxxing or, like, list to go shopping to take people down or
18 anything of that nature. It was so people didn't double serve. You
19 had to type in a name, Bobby Smith, and then it would pop up if
20 Bobby Smith was served. That was the only reason it was created.
21 It wasn't created for any nefarious means of going and getting
22 people and kidnapping them, of course.

23 And it was -- Tom explained it. It was citizens arrest
24 under lawful process and I believed it. I don't come from the world
25 of courts, I'm an entrepreneur. I build businesses and start

1 businesses and I don't build courts. I don't know how it all works,
2 but I was -- I guess I was hoodwinked, would be the proper word, so
3 if --

4 Can I sit down and read this? I'm sorry. I just got to
5 get closer to this. This is just going to take about ten more
6 minutes of your time and then I'll -- we'll be done here.

7 THE COURT: Take your time, sir.

8 DEFENDANT DEVER: All right. I apologize to the Court,
9 anyone who received the writs, those that served the writs and for
10 my participation regarding any documents created by Tom Murphy and
11 his environmental court.

12 Using hospice, my wife and I had to help both my father
13 and father-in-law die of cancer after they were reduced to skin and
14 bones. We've lost numerous other family members and friends to
15 cancer. My sister is a pediatric oncologist. I read that they
16 sacrificed years off of their lives due to the stress of treating
17 children who are dying of cancer.

18 None of this excuses my participation. However, this
19 history led to bad decisions on my part. These bad decisions have
20 led to the destruction of my life and my innocent wife's life as
21 well. I apologize to Anne for these difficult times. I am sorry.
22 I hope to one day to be able to mend and repair our life together.

23 I want to stress, I am not attempting to minimize my
24 actions. I wish to only explain why at the time of those actions I
25 did what I did. In hindsight, at the very least, I should have

1 required wording to be edited on the documents.

2 When Tom Murphy contacted me and directed me to what he
3 claimed to be Erin Brockovich's website, EWG.org/tap water, I
4 entered my hometown zip code, as well as New York, Chicago, L.A. and
5 Detroit. I was shocked and disturbed to discover the level of
6 cancer-causing carcinogens in the nation's tap water.

7 Over the next several days, Tom shared over 30 hours of
8 information. I regrettably agreed to bring about awareness on a
9 chat app called Telegram. This was bad decision number one and the
10 mistake of my lifetime. One lie and document led to another.

11 Eventually Tom had good people believing a vast
12 conspiracy and those involved attempting to stop it would receive
13 American Express black cards, \$2,000 service awards from the U.S.
14 Treasury for each writ served, thus, incentivizing people like
15 Darris Moody to serve huge numbers of writs. Tom even claimed
16 passports indicating diplomatic immunity for doing humanitarian work
17 would be provided in the future.

18 He convinced many of us, even a cloistered nun who
19 completed a 25-year vow of silence for God, that public officials
20 were ignoring and hiding public law 92-500, the Federal Water
21 Pollution Control Act of 1972.

22 Numerous times Tom stated that President Nixon instructed
23 bar attorneys and prosecutors to ignore public law 92-500. This
24 allowed him to pass along his disdain for bar attorneys. Tom said
25 the law requires that local municipalities provide the cleanest tap

1 water possible based on the latest technology available. He said
2 they were using technology from 1908.

3 Tom claimed his invention, the water reclaimer,
4 provided perfect tap water with optimum ph levels that actually
5 curbed cancer. He shared patents and patent drawings and the
6 reclaimer.com website, featuring a news interview of a younger Tom
7 demonstrating his invention to a reporter back in the '90s.
8 Everything was very compelling and convincing.

9 If all of his claims were true and Americans were
10 drinking and bathing in cancerous toxic water for decades, stopping
11 it by any means, including citizens arrest, made sense at the time.

12 I previously met President Trump's cabinet member,
13 Michael Flynn -- General Michael Flynn at the We The People Reunion
14 in Kentucky. The same place the woman approached me about being sex
15 trafficked, by the way.

16 After explaining the concept of the Peoples Bureau of
17 Investigation to him, he told me I needed to read the book, *A*
18 *Doctrine of a Lesser Magistrate*. The book made it very clear I was
19 obligated to stand up for the people and do something regarding the
20 cancerous water. To be aware a crime is occurring and do nothing is
21 a crime in itself. We were told that we were putting an end to
22 intentional mass kill crimes against humanity that alleged crime --
23 these alleged crimes surely contributed to my father and
24 father-in-law's horrible deaths and millions of other Americans over
25 the last five decades. Tom convinced me and others that we were

1 doing good works for God.

2 In hindsight, even if all of his claims were true, anyone
3 that was initially involved is likely no longer alive never mind
4 employed. I have no idea what percentage of his claims were true at
5 this point. Tom's original writs were printed on legal-sized paper
6 and contained two colored official court seals. Initially they had
7 to be served using registered mail. One could say he was the Pied
8 Piper of water.

9 We may live in a broken world in need of repair and
10 reform, however, a large portion of any brokenness transcends
11 generations making no one presently alive responsible. We were born
12 into and have inherited many problems making us victims of
13 circumstance. Therefore, any and all reform must be done Biblically
14 with brotherly love as the foundation.

15 Tom Murphy's decades of frustration regarding his water
16 reclaimer invention, his environmental court and his environmental
17 marshals had his documents rooted in anger, not love. He was
18 extremely angry with the EPA shutting down his invention.

19 When we first spoke, he may have been aware he was dying
20 of cancer. He may have been experiencing mental challenges. He had
21 a lot of anger. His anger rubbed off on others. I regrettably said
22 and did things totally out of character.

23 Regarding the Peoples Bureau of Investigation, the reason
24 Tom contacted me, due to COVID 19, state overreach, local business
25 and church lockdowns, I was inspired by prayer and the Holy Spirit

1 to create the logo and the website for the people. The logo -- the
2 four stars in the logo are the Father, the Son, the Holy Spirit and
3 the people. That's what they represent.

4 In Illinois, basketball rims were removed from outdoor
5 parks and police do-not-cross tape was wrapped around playgrounds.
6 The people clearly needed a three-letter entity that was
7 representing them as governments overstepped in many ways. The PBI
8 was to be just simply the rebranding of the people who have been
9 called conspiracy theorists, extremists and domestic terrorists for
10 simply exercising critical thinking and investigation of the
11 governments they created.

12 There are no rights or trademarks to the logo. There is
13 no leadership. Anyone can create a website, social media page, hat,
14 shirt, sign, et cetera. It's open source and similar to Shareware
15 software. I used to say the PBI is 350 million strong domestically
16 and eight billion strong internationally. The PBI is everyone's
17 equally. Everyone is born in an age of freedom.

18 Eventually there was a plan to have paid agents
19 protecting the people's rights in every county, but that would
20 require resources that do not currently exist.

21 I witnessed what I perceived as absolute despotism that
22 is mentioned in the Declaration of Independence. The Declaration
23 states that it is not only a right but a duty to create new guards.

24 I cannot apologize for attempting to create new guards as
25 our founders made it clear it was actually my duty to do so. I can,

1 however, sincerely apologize and take responsibility for educating
2 people in a process rooted in anger and fear.

3 I removed myself from the PBI six months prior to my
4 arrest. My obligation to create new guards was over. I felt that
5 others needed to step up and take over. I had no interest, ability
6 or inclination to manage or operate something of the PBI's
7 magnitude. The new guard was to be a gift to the people through me
8 to be used however the people saw fit. I was the creator and the
9 caretaker for a time. My work was done.

10 I'm a lifetime serial entrepreneur and can go from one
11 project to the next. In the summer of 2022, I moved on to an
12 gourmet oyster farm and Christian ministry project with the intent
13 to educate impoverished communities and third-world country in low
14 tech mushroom farming processes.

15 For 15 years we owned a burglar, fire alarm, card access
16 and video surveillance company. I always considered myself to be a
17 good Samaritan, not a criminal.

18 I recently discovered a distant relative, Robert de Vere,
19 signed the Magna Carta requiring King Edward to follow his own laws
20 and that our family motto is nothing is truer than truth.

21 I only wanted the Federal Water Pollution Control Act to
22 be upheld or Murphy's environmental court to see that our loved
23 ones, our children and grandchildren would no longer drink and bathe
24 in toxic cancerous water. It is obvious I made bad decisions in the
25 process. Decisions I will regret for the rest of my life.

1 The Sentencing Guidelines enhancements claim that I
2 intended to carry out kidnappings. This is completely false. There
3 are numerous recorded conversations on Telegram in which people
4 questioned who was going to enforce the writs. Time and time again
5 Tom stated, no one in this group is going to be arresting anyone and
6 that serving the writs was enforcement as far as the group was
7 concerned.

8 The PBI Telegram chats and people involved were primarily
9 retired Christian women. No one discussed performing arrests never
10 mind kidnappings.

11 I moderated chats for Tom and explained how to complete
12 his environmental court writs and how to serve them using registered
13 mail at the post office.

14 You might be asking yourself: Why did you feel the need
15 to do any of this? I come from a broken home. I'm a sinner. I
16 repent daily. I was born again at the age of 36. I'm a bond slave
17 to Jesus Christ, my Lord and Savior. I'm a product of my
18 environment.

19 I was ten years old in fourth grade in 1976, the 200th
20 anniversary of our independence. In sixth grade I was required to
21 study our founding fathers and their divine documents. I had to
22 write book reports on each of the founding fathers. I was asked to
23 lead the Pledge of Allegiance to our flag regularly over the six
24 most impressionable years of my life.

25 My father took me to the All Star game at Comiskey Park

1 in 1976. (Brief pause). I still had the red, white and blue
2 oversized ticket stub commemorating 200 years of independence.

3 Sorry. I'm sorry, your Honor.

4 THE COURT: Take your time.

5 DEFENDANT DEVER: It comes as no surprise that my wife
6 purchased Hamilton tickets for the play -- or purchased tickets for
7 the play Hamilton for us and our adult children. It's the only play
8 we all attended together. There is a line at the end. What do we
9 have, sir? A republic, if you can keep it. I believe the republic
10 has been on life support for multiple generations.

11 COVID overreach made it very clear. The founding fathers
12 must be rolling over in their graves. I love this country, the
13 founding fathers and their documents. I know in my heart I was
14 looking out for all of God's people. I have always been predisposed
15 to fix whatever I see that's broken.

16 When I was a young boy, I would patch and repair
17 imperfections on the cement curb in our cul-de-sac with a bucket of
18 mud. The rain would wash it all away. I would repair it over and
19 over again.

20 My wife and I and others are now paying for this
21 predisposition and I'm very sorry for my bad decisions. The
22 decisions have cost me and my innocent wife everything. She had to
23 shut down our 15-year-old arcade game sales e-commerce business, the
24 mushroom farm, ministry and vacate two office and warehouse spaces.
25 She had to sell, give away and donate inventory and 30 years of

1 collected tools, office equipment and property. She most recently
2 was forced to sell our dream home our kids grew up in. She now
3 lives in our son's basement and had to give up her dog temporarily.

4 I know I made some bad decisions and mistakes in
5 judgment, costly mistakes I regret. I wish I could take things back
6 and do things based in love rather than fear.

7 Regarding my punishment. I know I have experienced more
8 than enough. My wife has as well. We've lost everything. I've
9 traveled over 30 hours in shackles and had numerous threats from
10 violent inmates in five prisons and jails. I've been sleep-deprived
11 without my prescribed CPAP machine for sleep apnea for eight months.
12 I've been fighting vertigo for most of my incarceration. I've lost
13 30 pounds. I had to go to the emergency room at 4 a.m. for chest
14 pain caused by a blood pressure crisis of 190 over 151.

15 I have more than learned my lesson. I have had ample
16 time to reflect. I spend days alone with the grand architect of the
17 universe and the Holy Spirit. I read the New Testament five times
18 during my incarceration.

19 This experience has humbled me. It has further smoothed
20 any rough edges I may have had. I choose to look at it as a
21 controlled burn and the grand architect's blessing in disguise. I
22 tell myself and others that it has been an opportunity to refine
23 myself mentally, physically and spiritually.

24 My wife is suffering far more than I am. Years ago she
25 was diagnosed with trigeminal neuralgia, a nerve disorder that is so

1 painful that the doctors refer to it as the suicide disease.

2 Stress, noise or even a breeze hitting her face can trigger intense
3 pain that can last for days. I don't know how she's managed to this
4 point. She needs me by her side. We've been married for 30 years.
5 Last month was our anniversary.

6 I apologize once more, Anne, and to everyone negatively
7 affected by the writs and my actions. I apologize to your Honor for
8 this long speech.

9 This case is very different, complicated and involved and
10 I felt it required some clarification and explanation. None of what
11 I said was intended to excuse my action. I intended to only convey
12 why I did what I did. I take full responsibility for educating,
13 aiding and abetting threatening communications. I am very sorry.

14 I came into this as a caterpillar and I will leave as a
15 butterfly, but it will be on God's time. I want to put this part of
16 my life in the past and focus on a ministry project centered around
17 the Golden Rule.

18 We are commanded to love one another. We are commanded
19 to love our neighbor. We are commanded to love our brothers and
20 sisters. We are commanded to do everything in love.

21 I take these final words very serious and I hope and pray
22 you do as well, your Honor. The words God and love are synonymous.
23 With them, I believe the words, as they are written, can be
24 restored.

25 I pledge allegiance to the flag of the United States of

1 America and to the Republic for which it stands, one nation under
2 God, love, indivisible, with liberty and justice for all.

3 Your Honor, I ask that you please take my wife's medical
4 condition into consideration and consider house arrest. I humbly
5 request any and all leniency that you might consider. The Bible
6 makes it clear that you have been divinely appointed to your
7 position. May God continue to bless you, this Court, all the people
8 in this court today and this great country.

9 Thank you.

10 THE COURT: Thank you, Mr. Dever.

11 (Brief Pause)

12 THE COURT: Mr. Dever, you may take your seat.

13 DEFENDANT DEVER: Thank you.

14 THE COURT: As the lawyers know, it's ordinarily my
15 practice to pronounce sentence and then to give an explanation, but
16 I think in light of these proceedings this afternoon, there are a
17 few things, by way of explanation, that I want to say before I
18 pronounce sentence in either of these cases.

19 It goes without saying that these cases are among the
20 most unusual and out of the ordinary that have come before this
21 Court in some time. That is not to say that when we have cases that
22 are more ordinary, that they get less attention or anyone in this
23 process does not give them the appropriate consideration, but
24 this -- these two cases are so out of the ordinary that they have
25 consumed a considerable amount of consideration because there are so

1 many things in these two cases that just don't add up and don't make
2 any sense.

3 I have to say, Mr. Dever was just talking, as part of his
4 allocution, about how his objective in PBI was to protect people's
5 rights. He talks about the founding documents of this country. He
6 talks about reciting the Pledge of Allegiance to the flag of the
7 United States of America.

8 And then I look at the offense conduct that we have
9 involved in these cases. The offense conduct -- and frankly, the
10 core elements of the offense conduct here are not in dispute,
11 they're on paper, that there were public officials who were served
12 with documents saying that they had been tried *in absentia* and
13 convicted by some secret court of something that the accused -- in
14 almost every case before this Court, where the accused had no
15 responsibility; namely, something regarding water quality.

16 Of the 57 victims who are listed in this case, best I can
17 tell, 53 of them have nothing to do with water quality. Nothing.
18 But yet, they are informed anonymously that they have been tried *in*
19 *absentia* and convicted of a crime regarding water quality.

20 Now, we spent all afternoon going through the particulars
21 of due process regarding a federal sentencing. Trial and conviction
22 without the defendant even being notified, that's not due process.
23 That's no process at all. No right to be heard with regard to
24 something that the accused person, the convicted person, has no
25 responsibility over? That means that there was also no evidence.

1 Nothing.

2 The offense conduct in these two cases can only be
3 described as tyrannical. If we heard that those sorts of things
4 took place, we would think that that was in North Korea. I mean,
5 Stalin's show trials in the Soviet Union at least had show trials.
6 These didn't even claim to have show trials. This was conviction *in*
7 *absentia* for something that the people had nothing to do with.

8 But even that wasn't the end of it. Then there was the
9 publication at the post office, on a website, offering a bounty with
10 regard to these supposed convictions. Some of the victims here who
11 have spoken in this court have taken on positions of authority in
12 our society where they tend to tick people off, namely, some
13 criminal defendants. Sometimes domestic parties. I understand how
14 that is. Some of those folks might be willing to receive a bounty
15 for getting even. These 57 people were put in the position that not
16 only had they been convicted without notice, but now they had a
17 price on their head.

18 And here we are talking about the sanctity of the
19 founding documents of this country. Actions to protect people's
20 rights. Reverence for this country and the founding fathers.
21 Pledging allegiance to the flag. That just doesn't add up. That
22 doesn't make any sense at all.

23 Then layered on top of that we have such things as the
24 two voice mail messages left for the Register of Deeds. Where the
25 upshot was that the Register of Deeds was being informed that she

1 would be spared because of her association with this person who
2 claimed to have this great power as a member of this secret court to
3 try and convict people *in absentia* for things they had nothing to do
4 with. That just seems so arrogant. Tyrannical, vindictive
5 arrogance.

6 Now, having come to see that there's offense conduct
7 here, that is, as I say, tyrannical, vindictive arrogance, and then
8 to hear the description of who these two defendants were before any
9 of this took place. How does that make sense to anybody?

10 The musician at church, the piano player at church, the
11 singer, the one who makes these gospel records. Man who goes to
12 church on a regular basis, is looking out for how people in Africa
13 can learn how to feed themselves when they live in poverty. How
14 does that add up?

15 When you put all of those pieces together, I believe that
16 the offense conduct does check all of the boxes for conspiracy to
17 commit kidnapping. It would be the most unusual conspiracy to
18 commit kidnapping any of us have ever heard of, but it does check
19 the boxes of every one of the elements.

20 And as has been argued by the Government, the Guideline
21 range for that, if that had been a count of conviction, is well
22 higher than anything we're talking about here.

23 But then to layer on top of that -- even though both
24 defendants have obviously backed off of this position, but they
25 obviously had the position for at least some period of time -- that

1 in that arrogance, that the authorities of this country -- the
2 Marshal Service, this Court -- had no authority over them
3 whatsoever. To claim this reverence for the founding documents, the
4 founding fathers, the rights of people and then to take those
5 positions, that is so grossly inconsistent that it makes it very
6 difficult to come up with an appropriate sentence.

7 Ms. Moody, I need for you to stand for the imposition of
8 the sentence.

9 Pursuant to the Sentencing Reform Act of 1984 and the
10 case of United States vs. Booker, it is the judgment of this Court,
11 having considered the factors noted 18 U.S.C., Section 3553(a), that
12 the defendant, Darris Gibson Moody, is hereby committed to the
13 custody of the United States Bureau of Prisons to be imprisoned for
14 a term of 24 months.

15 The Court recommends that the defendant be allowed to
16 participate in any available educational and vocational programs
17 during the period of imprisonment.

18 The Court calls to the attention of the custodial
19 authorities that the defendant has a history of mental health issues
20 and recommends that the defendant be allowed to participate in any
21 available mental health treatment programs while incarcerated.

22 Upon release from imprisonment, the defendant shall be
23 placed on supervised release for a term of three years. Within
24 72 hours of release from the custody of the Bureau of Prisons, the
25 defendant shall report in person to the probation office in the

1 district to which the defendant is released.

2 While on supervised release, the defendant shall not
3 commit another federal, state or local crime and shall comply with
4 the mandatory and discretionary conditions of supervised release as
5 those have been adopted by the Court in the Western District of
6 North Carolina.

7 In addition, the defendant shall comply with the
8 following additional condition:

9 The defendant shall participate in a mental health
10 evaluation and treatment program and follow the rules and
11 regulations of that program. The probation officer, in consultation
12 with the treatment provider, will supervise the defendant's
13 participation in the program, including but not limited to, the
14 provider, location, modality, duration, and intensity thereof. The
15 defendant shall take all mental health medications as prescribed by
16 a licensed healthcare practitioner.

17 The defendant shall not communicate or otherwise interact
18 with any co-defendants, either directly or through some other
19 person, without first obtaining permission from the probation
20 officer. And likewise, the defendant shall not communicate or
21 otherwise interact with any of the victims in this matter, either
22 directly or through some other person, without first obtaining
23 permission from the probation officer.

24 The Court finds that the defendant does not have the
25 ability to pay a fine or interest, and having considered the factors

1 noted in 18 U.S.C., Section 3572(a), the Court will waive the
2 payment of a fine and interest in this case.

3 Payment of the criminal monetary penalties shall be due
4 and payable immediately.

5 The Court has considered the financial and other
6 information contained in the pre-sentence report and finds that the
7 following is feasible:

8 If the defendant is unable to pay any monetary penalty
9 immediately, during the period of imprisonment, payments shall be
10 made through the Federal Bureau of Prisons Inmate Financial
11 Responsibility Program. Upon release from imprisonment, any
12 remaining balance shall be paid in monthly installments of no less
13 than \$50 to commence within 60 days of release until paid in full.

14 Throughout the period of supervision, the probation
15 officer shall monitor the defendant's economic circumstances and
16 shall report to the Court with any recommendations as warranted and
17 any material changes that affect the defendant's ability to pay any
18 Court-ordered penalties.

19 It is also ordered that the defendant shall pay the
20 United States a special assessment in the amount of one hundred
21 dollars.

22 Since so many of the reasons are going to apply to both
23 of these, I'm going to give the reasons for the two sentences after
24 I complete the pronouncement of sentence with regard to Mr. Dever.

25 You may take your seat, Ms. Moody.

1 Pursuant to the Sentencing Reform Act of 1984 and the
2 case of United States vs. Booker, it is the judgment of this Court,
3 having considered the factors noted in 18 U.S.C., Section 3553(a),
4 that the defendant, Timothy Michael Dever, is hereby committed to
5 the custody of the United States Bureau of Prisons to be imprisoned
6 as follows:

7 For 60 months as to Count One, 60 months as to Count Two,
8 60 months as to Count Three, 60 months as to Count Four and
9 60 months as to Count Five.

10 Now, those terms shall be served as follows:

11 Counts One and Two shall be served concurrently to one
12 another. Counts Three, Four and Five shall be served concurrently
13 to one another. However, those two terms, concurrent terms, will be
14 served consecutive to one another for a total term of imprisonment
15 of 120 months.

16 The Court calls to the attention of the custodial
17 authorities that the defendant has a history of mental health issues
18 and recommends that the defendant be allowed to participate in any
19 available mental health treatment programs while incarcerated.

20 Upon release from imprisonment, the defendant shall be
21 placed on supervised release for a term of three years. That
22 consists of a term of three years as to each of Counts One through
23 Five with all of those terms to be served concurrently.

24 Within 72 hours of release from the custody of the Bureau
25 of Prisons, the defendant shall report in person to the probation

1 office in which the defendant is released.

2 While on supervised release, the defendant shall not
3 commit another federal, state or local crime and shall comply with
4 the mandatory and discretionary conditions of supervised release as
5 those have been adopted by the Court in the Western District of
6 North Carolina.

7 In addition, the defendant shall comply with the
8 following additional conditions:

9 The defendant shall participate in a mental health
10 evaluation and treatment program and follow the rules and
11 regulations of such program. The probation officer, in consultation
12 with the treatment provider, will supervise the defendant's
13 participation in the program, including but not limited to, the
14 provider, location, modality, duration, and intensity thereof. The
15 defendant shall take all mental health medications as prescribed by
16 a licensed healthcare practitioner.

17 The defendant shall not communicate or otherwise interact
18 with any of his co-defendants in this matter, either directly or
19 indirectly or through some other person, without first obtaining
20 permission of the probation officer.

21 Likewise, the defendant shall not communicate or
22 otherwise interact with any of the victims in this matter, either
23 directly or through some other person, without first obtaining
24 permission of the probation officer.

25 It is ordered that the defendant shall pay the United

1 States a special assessment in the amount of five hundred dollars.

2 The Court finds that the defendant does not have the
3 ability to pay a fine or interest, and having considered the factors
4 noted in 18 U.S.C., Section 3572(a), the Court will waive the
5 payment of a fine and interest in this case. Payment of the
6 criminal monetary penalty shall be due and payable immediately.

7 The Court has considered the financial and other
8 information contained in the pre-sentence report and finds that the
9 following is feasible:

10 If the defendant is unable to pay any monetary penalty
11 immediately, during the period of imprisonment, payments shall be
12 made through the Federal Bureau of Prisons Inmate Financial
13 Responsibility Program. Upon release from imprisonment, any
14 remaining balance shall be paid in monthly installments of no less
15 than \$50 to commence within 60 days of release until paid in full.

16 Throughout the period of supervision, the probation
17 officer shall monitor the defendant's economic circumstances and
18 shall report to the Court with recommendations as warranted any
19 material changes that affect the defendant's ability to pay any
20 Court-ordered penalties.

21 Mr. Dever, you may take your seat as I proceed to this
22 next portion here.

23 My reasons for imposing these sentences -- and, first,
24 I'll try to address some of the things that are common to both of
25 them and also address the separate portions that are unique to each.

1 But under the sentencing statute, one of the factors --
2 in fact, one of the first factors to consider under subpart
3 (a) (2) (A) of the sentencing statute, Section 3553, is to fashion a
4 sentence that reflects the seriousness of the offense.

5 Now here, the seriousness of the offense -- first of all,
6 the seriousness -- the offense and the seriousness of the offense is
7 not having disdain for the Government. There are a lot of people
8 who have disdain for the Government. That -- you have the right to
9 hold those beliefs. That's not what this sentence is about.

10 The seriousness of the offense is the direct attack and
11 affront to these individuals. To not only inform them that they
12 have supposedly been convicted of some crime that they had
13 absolutely nothing to do with, but coupling that with actual
14 affirmative action regarding the information to the public -- at
15 post offices and on the Internet -- that there would be a bounty
16 paid, 10,000 to \$20,000, for these people to be taken into custody
17 for something that's completely fictitious.

18 To do this anonymously, to do this where there's no place
19 to go to try to clear one's name, to do this with regard to 57
20 different officials of this area. And not just because it causes
21 the misery that it causes -- because the damage is greater than what
22 these victims have explained, both in writing and here in court --
23 but it completely thwarts the political process that we have in this
24 country.

25 If you think the sheriff of your county is doing a

1 horrible job, get out the vote. Organize a campaign against him.
2 Run against him. Whatever it is that you think you need to do. But
3 to try -- to put things in motion such that he might get taken into
4 the custody of some private citizen as to what might happen to him,
5 that's just not how it works. That is not what you do when you're
6 unhappy with your government.

7 If public officials are exposed to this sort of thing,
8 nobody worth their salt is going to get involved in government. And
9 you know what you're going to have then? You're going to have the
10 worst possible people running the show. You think things are bad
11 now? This sort of thing continues, things are going to get a whole
12 lot worse.

13 Now, in addition to that, as I mentioned earlier, the
14 offense conduct that is involved here, I believe would have checked
15 the box of every element of conspiracy to commit kidnapping. Even
16 though there may not have been an intent on the part of either
17 defendant that anyone actually be kidnapped or taken into the
18 custody of some private individual, but affirmative steps were
19 actually taken by both defendants that could have led to that taking
20 place.

21 And, of course, as explained here, the Guideline range
22 for that would have been double what I have imposed with regard to
23 Mr. Dever and about eight times, nine times what I have imposed with
24 regard to Ms. Moody.

25 So all of these things, I think, reflect the seriousness

1 of the offense. And if the only thing I did was to consider the
2 seriousness of the offense with regard to both of these defendants,
3 I can tell you that the sentence that I would have imposed would
4 have been much longer.

5 And that's one place where I do -- I want to address some
6 of the arguments that were made about comparing this both to what
7 Mr. Gast was calling white board offenses, other offenses that are
8 very dissimilar to these, and also comparing them to the January 6th
9 events in Washington. That argument does not resonate with me at
10 all.

11 First of all, comparing completely dissimilar offenses
12 really does not come into the calculation of an appropriate sentence
13 because to conduct that kind of exercise would be an endless task.
14 You can come up with any sort of argument doing that. It is
15 needless, it is pointless.

16 Comparing this to the events regarding January 6th is
17 likewise pointless because with the January 6th event, you have
18 people from one extreme to the other. Some really bad actors, some
19 who just got wrapped up in bad activity. Picking and choosing out
20 of that very large group who to compare these defendants to or these
21 activities to is likewise a pointless exercise.

22 The only commonality is those were people who had disdain
23 for the government and these defendants have disdain for the
24 Government. But as I mentioned earlier, disdain for the Government
25 is no offense whatsoever.

1 The question is what did you do? What is the offense
2 conduct? And here the offense conduct was very serious because of
3 the nature of what was expressed and what was put into action.

4 Now, having said all of that, with regard to Ms. Moody,
5 obviously I gave what I believe, under the circumstances here, is a
6 very lenient sentence and I have done that largely for the reasons
7 argued very ably by defense counsel.

8 Defense counsel has pointed to all of the various
9 elements here, both argued here as well as in the sentencing
10 memorandum that has been presented, about the essentially spotless
11 record that the defendant seems to have had before these events.

12 That even within the time that she has been detained that
13 she has been a model within the detention facility. Helping out
14 other inmates, even cooperating very well with those who are
15 detaining her.

16 Having been very naive in being led into this sort of
17 behavior. But, again, naivete isn't much of an excuse when you do
18 things that are this damaging. I've taken into account the remorse
19 that Ms. Moody has expressed.

20 With regard to the issue of deterrence, I feel fairly
21 confident that we're never going to see Ms. Moody in this courtroom
22 again. I think that she realizes that she got caught off on a
23 tangent for far, far too long and ended up going down a path that
24 was utterly destructive, not only in the harm to other people, but
25 in the harm to her own life, her family, her future. But I still

1 need to keep in mind the factor under the sentencing statute to
2 provide a sentence that affords general deterrence.

3 The message needs to be sent to the general public that
4 you can dislike the federal government all you want to. You can
5 dislike your local government all you want to. But that doesn't
6 mean that you can threaten the officials, it doesn't mean that you
7 can set things in motion that might cause them harm. It doesn't
8 mean that you might do things that will cause other people to harm
9 those officials. You can't do that. And there are strong
10 consequences that come with doing that.

11 With regard to Mr. Dever, obviously I have imposed a
12 sentence that is considerably longer than the one that I have
13 imposed with regard to Ms. Moody. It is, however, considerably
14 shorter than the one that has been advocated by the Government. I
15 have imposed a sentence that is within the Guideline range taking
16 into account the offense conduct that we have here.

17 Now, I want to be clear, the things that some
18 confidential informant may have said in the Transylvania County
19 Jail, that didn't add any enhancements. That doesn't add to the
20 offense conduct. That really hasn't influenced my sentencing
21 decision at all.

22 What has influenced my sentencing decision is the offense
23 conduct. Namely, being the hub of the wheel with regard to the
24 dissemination of these very harmful documents. Instructing those to
25 whom these documents are sent on how to essentially effectuate the

1 harm, or part of the harm that they're intended to cause, and then
2 further facilitating the second part of the process and, that is,
3 posting on the Internet the information that could be used by other
4 people who are put in motion by this very nefarious process.

5 In that sense, the difference between these sentences is
6 because Ms. Moody was, in effect, a spoke of the wheel whereas Mr.
7 Dever was the hub of the wheel. That is a big part of the
8 difference between the disparity between these sentences. That is
9 why the general deterrence factor needs to be so much stronger with
10 regard to what Mr. Dever undertook here.

11 It's one thing for some local person who has disdain for
12 the government to write the wrong kind of letter, to maybe set
13 things in motion with regard to some public official that is
14 unlawful and nefarious in nature, but it's a totally different
15 matter to be the coordinator of such activity on what is nearly a
16 national basis. And the message needs to be sent to the public in
17 general that if you do that, there are major consequences.

18 If you hate the government, get people who think like you
19 to band together with your resources, your finances. Get people who
20 are running for office, get people who are in positions of authority
21 by legal means.

22 Don't let these sorts of expressions of homage to the
23 founding documents, the founding fathers, the Pledge of Allegiance
24 ring so hollow as they do when they are spoken by someone who did
25 something that was so tyrannical and so nefarious and directed to

1 people who were utterly innocent of what they were accused of doing.

2 That's why I see the seriousness of the offense with
3 regard to Mr. Dever to be substantially higher than that of Ms.
4 Moody.

5 I have taken into account the various arguments, all of
6 the arguments that were made by Mr. Anderson on behalf of Mr. Dever,
7 as I said, with regard to the comparisons to those other sorts of
8 cases or even the comparison to the Connecticut case, which was
9 obviously somebody who has some very severe mental illness issues.
10 Those ring very hollow for me.

11 But the other factors here -- the prior background of Mr.
12 Dever -- I've taken into account. I've taken that into account as
13 much as anything else with the hope that that's what Mr. Dever is
14 going to return to after this matter is entirely completed.

15 As I said at the beginning, this is a case that in many
16 respects I find difficult, I find baffling. I don't find it
17 baffling that some people find the government -- at both the
18 national, state and local level -- to be something to complain very
19 loudly about. At times we all do that. It's just this manner of
20 going about it that is such a deviation from anything that this
21 country stands for that leads me to these conclusions.

22 Ms. Jones are there any other issues regarding either the
23 sentence or the judgment?

24 MS. JONES: No, sir, your Honor.

25 THE COURT: Mr. Anderson?

1 MR. ANDERSON: No, your Honor.

2 THE COURT: Mr. Gast?

3 MR. GAST: No, your Honor. Thank you.

4 THE COURT: Are there counts that need to be dismissed?

5 MR. GAST: Yes, your Honor. In Ms. Moody's case we would
6 move to dismiss, pursuant to the plea agreement, Counts Two through
7 62.

8 THE COURT: And that will be allowed and those counts as
9 to Ms. Moody are hereby dismissed.

10 MR. GAST: And Mr. Dever's case, pursuant to the plea
11 agreement, the Government moves to dismiss Counts Six through 58.

12 THE COURT: And that will be allowed. Those counts as to
13 Mr. Dever in his indictment are hereby dismissed.

14 Ms. Moody, you have the right to appeal the sentence that
15 I have imposed to the Fourth Circuit Court of Appeals on any grounds
16 that you have not waived. You've pleaded guilty pursuant to a plea
17 agreement. That plea agreement includes some waivers that may
18 substantially affect your appeal rights. You'll need to consult
19 with your attorney as to what effect those waivers may be.

20 However, if you choose to appeal, you must file a written
21 notice of appeal with the clerk of this court within a period of 14
22 calendar days following the date of the entry of the final judgment
23 in this case.

24 If you choose to appeal but do not have the funds with
25 which to appeal, you have previously been determined to be indigent

1 and, therefore, you may appeal at government expense.

2 Do you understand this right of appeal as I have
3 explained it?

4 DEFENDANT MOODY: Yes, your Honor.

5 THE COURT: Mr. Dever, likewise, you have the right to
6 appeal the sentence that I have imposed with regard to your case to
7 the Fourth Circuit Court of Appeals on any grounds that you have not
8 waived.

9 You, likewise, have pleaded guilty pursuant to a plea
10 agreement. That plea agreement includes some waivers that may
11 substantially affect your appeal rights. You will need to consult
12 with your attorney as to what effect those waivers may have.

13 However, if you choose to appeal, you must file a written
14 notice of appeal with the clerk of this court within a period of 14
15 calendar days following the date of the entry of the final judgment
16 in this case.

17 If you choose to appeal but do not have the funds with
18 which to appeal, you have previously been determined to be indigent
19 and, therefore, you may appeal at government expense.

20 Do you understand this right of appeal as I have
21 explained it?

22 DEFENDANT DEVER: Yes, your Honor.

23 THE COURT: In closing, I'd reiterate, it is a most
24 unusual case. It is unfortunate, I think, that two individuals who
25 had led what appeared to have been exemplary lives got themselves

1 wrapped up in this, got their minds wrapped into doing something of
2 this nature, particularly at this stage of life. But be that as it
3 may, our nation cannot stand when things like this happen.

4 It is unfortunate what was done and in that sense, I
5 think it's unfortunate that these sentences had to be imposed, but I
6 find that they are necessary under the circumstances.

7 I wish both of you the best. I wish -- I hope that both
8 of you see ways to not only redirect your lives, but reconstitute
9 your lives so that nothing like this ever happens again and that you
10 can get on a positive path. That won't be easy. I wish both of you
11 the best.

12 Both defendants are remanded to the custody of the
13 marshal. This matter is concluded.

14 Marshal, that's our last matter for the day. Please
15 recess us until further call.

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18 (Hearing concluding at 5:09 p.m.)
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1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF NORTH CAROLINA

3
4 CERTIFICATE OF OFFICIAL REPORTER

5
6 I, Michelle A. McGirr, RMR, CRR, CRC, Federal
7 Official Court Reporter, in and for the United States District Court
8 for the Western District of North Carolina, do hereby certify that
9 pursuant to Section 753, Title 28, United States Code, that the
10 foregoing is a true and accurate transcript of my stenographically
11 reported proceedings held in the above-entitled matter and that the
12 transcript page format is in conformance with the regulations of the
13 Judicial Conference of the United States.

14
15 Dated this 9th day of October, 2023

16
17 /s/ Michelle A. McGirr
18 MICHELLE A. MCGIRR
19 RMR, CRR, CRC
20 U.S. Official Court Reporter
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22
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